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# TRANSCRIPT OF RECORD.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

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No. 570.

THE INTERSTATE COMMERCE COMMISSION,  
APPELLANT,

VS.

NORTHERN PACIFIC RAILWAY COMPANY.

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APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR  
THE DISTRICT OF MINNESOTA.

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FILED AUGUST 17, 1909.

(21796)



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1 UNITED STATES OF AMERICA.

NORTHERN PACIFIC RAILWAY COMPANY, complainant, vs. THE INTERSTATE COMMERCE COMMISSION, defendant.	}	Equity No. 893.
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Pleas before the honorable the judges of the Circuit Court of the United States of America for the Third Division of the District of Minnesota of the December, A. D. 1908, term of said court held in the city of Saint Paul in said district, in the year of our Lord 1908.

DISTRICT OF MINNESOTA, ss.

Be it remembered that on the 25th day of May, A. D. 1909, came the complainant above named by its solicitors and filed in the clerk's office of said court its bill of complaint in the words and figures following, to wit:

2 In the Circuit Court of the United States for the District of Minnesota.

NORTHERN PACIFIC RAILWAY COMPANY, complainant, vs. THE INTERSTATE COMMERCE COMMISSION, defendant.	}
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*Bill of complaint.*

*To the judges of the Circuit Court of the United States, District of Minnesota, in equity sitting:*

The Northern Pacific Railway Company, a corporation organized under the laws of the State of Wisconsin, brings this its bill against the Interstate Commerce Commission, established and existing under and by virtue of an act of Congress of the United States, and thereupon your orator says:

It is a common carrier engaged in the transportation of both persons and property, and its railway extends from Saint Paul, Minneapolis, and Ashland on the east to Puget Sound points and Portland on the west, and as such carrier it is subject to the act of Congress of the United States entitled "An act to regulate commerce," approved February 4, 1887, and the acts amendatory thereof. It has its principal operating office in the city of Saint Paul, State of Minnesota.

Your orator purchased in 1896 the railway system formerly belonging to the Northern Pacific Railroad Company, a corporation chartered by the act of Congress of July 2, 1864. It made such purchase for the purpose of transporting freight and passengers over its lines of railway, particularly freight and passengers between its eastern termini and its western; and since 1896 it has

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spent many millions of dollars in improving its railway and in perfecting its service for the purpose very largely of transporting freight and passengers between its said termini; and it has established through routes and through service beyond its own lines. Your orator several years ago, for the purpose of establishing permanent through rates and service between all points on the Burlington and its own western termini, joined with the Great Northern Railway in the purchase of the Chicago, Burlington & Quincy system, which connects with your orator's line at Saint Paul and Minneapolis and at Billings in Montana. After such purchase your orator established and has since maintained joint routes and rates from all points on the Burlington system to Puget Sound, and it has maintained joint routes and rates from Chicago to Puget Sound via other lines connecting with your orator at its eastern termini. For some years it has maintained with the Burlington system through train and through car service to and from Puget Sound points.

From Saint Paul to Tacoma and Seattle via your orator's line is substantially nineteen hundred (1,900) miles, and from Billings to Tacoma and Seattle is substantially one thousand (1,000) miles. From Portland to Tacoma via your orator's line is about one hundred forty (140) miles, and from Portland to Seattle about one hundred eighty (180) miles.

From all points on the Missouri River and from Chicago and all points east of the Missouri River the distance to Puget Sound points via your orator's line in connection with the Burlington system and other railways is shorter than the distance to Puget Sound points via the Union Pacific Railway and its proprietary lines through Portland; and the time of travel from every point on the Missouri River and every point east thereof to Puget Sound points is less via your orator's said lines than via Portland. Also the through train and through car service is better via your orator's lines than via Portland, and in every other respect the service and accommodations to passenger travel via your orator's lines are at least as good as those of the line through Portland.

On or about the 14th of April, 1908, the defendant commission of its own motion instituted an inquiry as to whether a joint route and through joint rates for the carriage of passengers and their baggage ought to be established by order of the commission between points on the Northern Pacific Railway in the State of Washington and Chicago, Illinois, and other points on the Chicago & Northwestern, and Omaha, Kansas City and other points on the Union Pacific Railway. Your orator, the Chicago & Northwestern Railway Company, the Union Pacific Railway Company, the Oregon Short Line Railroad Company, and the Oregon Railroad & Navigation Company were made parties and served with notice by the commission. Afterwards such further proceedings were had before the defendant commission that on the 4th day of May, 1909, it filed its opinion and order in the words following, that is to say:

In the matter of through passenger routes via Portland, Oreg.

Submitted April 3, 1909. Decided May 4, 1909.

The Northern Pacific Railway Company, the Union Pacific Lines, and the Chicago & Northwestern Railway Company ordered to join in the sale of through passenger tickets between Seattle and other points in the Northwest and eastern destinations, via Portland, Oreg., and to accord through facilities, like the checking of baggage, over this route.

A. H. Lossow for the Interstate Commerce Commission.

C. W. Bunn for Northern Pacific Railway Company.

S. A. Lynde for Chicago & Northwestern Railway Company.

N. H. Loomis, P. L. Williams, W. W. Cotton, and F. C. Dillard for Union Pacific Railroad Company, Oregon Short Line Railroad Company, and Oregon Railroad & Navigation Company.

*Report of the commission.*

PROUTY, commissioner:

The Northern Pacific Railway Company declines to join in the sale of through tickets between Seattle and other points in the Northwest and eastern destinations via Portland, Ore., and to accord through facilities, like the checking of baggage, over this route, and this leads to much annoyance and has been the source of much complaint. The commission, being in receipt of complaints from the traveling public, and deeming the subject of sufficient public importance to require investigation, has instituted this proceeding upon its own motion for the purpose of determining the right of the matter and, if necessary, entering an order for the establishment of through routes and joint rates.

The Northern Pacific Railway Company, the Chicago & Northwestern Railway Company, and the Union Pacific lines, namely, the Union Pacific Railroad Company, the Oregon Short Line Railroad Company, and the Oregon Railroad & Navigation Company, were made parties and required to answer. The Northern Pacific justifies its refusal. The answers of the various Union Pacific companies are in the nature of complaints themselves: they aver that a through route should, for reasons set forth, be opened, and ask that the commission establish such joint rates.

The parties have furnished certain information called for by the commission itself, have introduced such testimony as they severally desired, and have presented the case on brief and oral argument.

In this discussion Tacoma will be taken as illustrative of those points in the Northwest which are involved. The Northern Pacific Railway extends from St. Paul to Tacoma, and it also operates a line

from Seattle through Tacoma to Portland. Numerous lines of railway lead from Chicago to St. Paul.

The Union Pacific lines extend from Omaha to Portland, and various other lines connect Chicago and Omaha.

Hence, a passenger at Chicago can reach Tacoma either via St. Paul and the Northern Pacific or via Omaha and the Union Pacific lines to Portland and from Portland via the Northern Pacific.

The Chicago, Burlington & Quincy Railroad, which is owned and controlled by the Northern Pacific and the Great Northern jointly, runs from Omaha, Kansas City, and other Missouri River points to Billings, Mont., where it connects with the Northern

7 Pacific. The Union Pacific lines extend from Omaha, Kansas City, and other Missouri River points to Portland. Passengers at the Missouri River may therefore travel to Tacoma either via the Burlington route to Billings and thence via the Northern Pacific or via the Union Pacific lines to Portland and thence via the Northern Pacific.

Since practically all passenger traffic between territory east of the Missouri River can and does pass through Chicago and Missouri River points en route for Tacoma, the points above selected fairly illustrate the general situation and the questions presented.

When the northern route is used the Northern Pacific may carry the passenger from St. Paul to Tacoma, a distance of 1,900 miles, and must carry him from Billings, a distance of about 1,000 miles, while if the Union Pacific route is selected, the Northern Pacific can only transport the passenger from Portland to Tacoma, a distance of 140 miles. The Northern Pacific declines to make joint rates with the Union Pacific lines, for the reason that to do so would be to encourage the movement of travel through Portland, and thereby to deprive it of the privilege of carrying the passenger by the other route and thus obtaining the long haul.

The act to regulate commerce empowers this commission to establish a through route and joint rate in cases like the present, provided no satisfactory through route already exists. The Northern Pacific insists that it already affords a satisfactory through route to points upon its line north of Portland, and hence that the commission has no jurisdiction to open the Portland gateway, even though, as a matter of discretion, it might be of the opinion that this ought to be done.

In *Pacific Coast Lumber Mfrs. Assn. v. Northern Pacific*  
8 *Ry. Co.*, 14 I. C. C. Rep., 51, the commission passed upon an application to open the Portland gateway to the movement of lumber from Tacoma and similar points to eastern destinations over the lines of the Union Pacific and its connections. In that proceeding we held that the Northern Pacific and Great Northern already furnished a satisfactory route to Colorado common points, which are Cheyenne, Denver, Pueblo, and points in that general line north and south, and all territory east, but that there was no satisfactory through route to territory west of Colorado common points, and we

established joint rates applicable to that territory to which no satisfactory route was found to exist.

Up to the time that case was decided, and indeed when this proceeding was begun, there was no joint through passenger tariff between the Union Pacific lines and the Northern Pacific through Portland. Since then the Northern Pacific has expressed a willingness to establish joint passenger schedules from Colorado common points and territory west to Tacoma and similar points and such tariffs are now in effect. It still refuses to make joint rates from territory east of Colorado common points. It insists that the same considerations which led us to hold in case of lumber, that a satisfactory route already existed by the northern lines to that territory, must control our action in the present case.

In the report of that case, at page 59, we said:

"Attention should be called to the fact that a wide difference exists between a reasonable through route for the movement of freight and one for passenger traffic. There enters into the passenger service a personal element which does not exist in the case of property. We might well say that a passenger should have the right to journey from Seattle to Omaha via Portland with the conveniences of a through service, although a carload of lumber was not entitled to that privilege."

This was not intended to indicate what would be a satisfactory passenger route, but simply to reserve for consideration that  
9 question, which is now for the first time before the commission in this proceeding.

In order to defeat the jurisdiction of the commission the existing route must, in the language of the statute, be "reasonable or satisfactory." This, we think, is equivalent to "reasonably satisfactory." The dissatisfaction of the passenger must spring from some reason and not be the product of mere whim.

The first inquiry is, With respect to whom must this route be satisfactory? This same question might arise in case of freight traffic. A route satisfactory to one kind of freight might not be satisfactory with respect to another. Most commodities are indifferent to heat and cold, and it is therefore immaterial whether they are carried through high or low temperatures. Fruits and vegetables may be injured and indeed totally destroyed by freezing or overheating. It might well happen, therefore, that a route entirely satisfactory as to most kinds of freight would not be satisfactory to these perishable articles.

In the case of freight it is possible to distinguish between different commodities and to establish a through route as to one article and not as to another; but with passengers this can not be done, since whatever joint rate is ordered must be open to the general public. It would seem, therefore, that if the existing route is unsatisfactory to any considerable portion of the public desiring to use some route, then it should not be held reasonably satisfactory.

To state this in another way: The caprice or even the proper desire of an occasional passenger should not govern, but if any considerable part of the traveling public reasonably prefer to use some other route rather than the one existing, then the existing route cannot be called a reasonable and satisfactory through route. - We ought  
10 to inquire, therefore, in the present case, whether any substantial part of the entire body of travelers moving between these points in the northwest and eastern destinations does reasonably desire to travel via Portland. If so, this commission has jurisdiction to open that gateway.

And this is the reasonable conclusion from all the provisions of the act which bear directly or indirectly upon this establishment of through routes and joint rates. Under the original act it was provided that different railroad companies should interchange traffic with one another; but the act contained no provision by which the details of this interchange could be determined, and the courts held that, as at the common law, it was for the carriers to determine for themselves what arrangements for through business should be entered into and upon what terms. The act was finally amended so as to give to the commission authority to prescribe through routes and joint rates, and to fix the terms and conditions under which these routes should be operated; but the commission was only authorized to do this where no reasonable or satisfactory route already existed. The plain intent of all these provisions comes to this: The public shall be properly served. So long as it is properly served the carriers may themselves determine upon the means by which the service shall be rendered. The fundamental question in every case is, Are the public necessities, under all the circumstances, fairly met? Such is the question here. Considering fairly the legitimate desires of those who use these railway lines, ought the facilities of through travel via the Portland gateway to be accorded, or is the present arrangement reasonable and satisfactory?

By what test are we to determine what is reasonable and  
11 satisfactory? The Northern Pacific contends that the same considerations which apply in case of freight must also control in case of passengers; that reference can only be had to the incidents of the transportation itself; that if it offers a route by which the passenger can be taken as quickly and with the same physical comfort, then the passenger can not reasonably prefer another route.

The distance from both Chicago and the Missouri River to Tacoma via St. Paul or Billings is somewhat less than via Portland. From Chicago via St. Paul the distance is 2,319 miles, while via Omaha and Portland it is 2,436 miles. From Omaha via Billings the distance is 1,909 miles, via Portland 1,913 miles. The running time from Chicago and the Missouri River is somewhat less via St. Paul and Billings than via Portland. The train service from St. Paul is equally good with that from Omaha. At the present time there is but one through train from the Missouri River via Billings, with a

second train involving a change of cars at Billings and a lay over. It was stated upon the hearing that another through train would be put on in the near future and permanently maintained.

On the whole it seems to be true that from the greater part of the territory in question, and we are only considering the matter in its broad aspect, the distance via the northern lines is somewhat shorter and the time somewhat less. The passenger goes in as good a car and is provided with as good a berth and as good a meal. Beyond this the Northern Pacific declares the passenger must not look.

It is evident that, looking entirely to the physical comfort of the passengers, the northern line is not always as satisfactory as the southern. That route traverses a section of country where the cold is much more severe in winter and longer continued. The snows are more frequent and deeper. Interruption of travel from snow blockade and similar causes is much greater. Passengers  
12 might find it not only less comfortable, but in some instances even dangerous, to take the journey by this route, although by the southern line it might be undertaken with comfort. Upon the other hand, during the heated period of the summer the northern route may be much cooler and cleaner than the southern.

So, too, looking entirely to the certainty with which one reaches in a given time his journey's end, the southern route may at times pre-ent advantages over the northern, which would lead a reasonable man to prefer it. The severe weather during the winter months interrupts to some extent travel upon that line. The period of high water comes at a different time upon the southern lines than upon the northern. Communication may be more certain at one period of the year by one line and at some other period by the other line. We are considering the character of these routes, not with respect to a single day or a single season, but with respect to the whole year and to a series of years. May it not be well said that the traveling public, even if the test suggested by the Northern Pacific were the correct one, even if the only inquiry was whether the passenger could reach his journey's end with certainty and comfort, are entitled to have these two routes open; and can it be said that the public should be confined at all times to the use of either one?

But these are minor considerations. The real question is that suggested by the commission in the extract from the Lumber case, already given. Is there not a distinction between inanimate freight and human beings? Does not the element of personal preference properly enter into the determination of this question?

Let this situation be clearly understood. If the passenger travels  
13 by the Northern Pacific route, he can pass, broadly speaking, through no territory lying west of the Missouri River and south of the main line of the Northern Pacific. If he goes via Portland, he can select any one of the great variety of routes traversing this southern territory as far as Ogden. From Ogden he must go by the Union Pacific lines. The question is, therefore, whether the passenger desiring to go from some eastern point to



Tacoma must patronize the northern route or whether he may properly prefer to pass over some one of these southern routes.

A passenger by the Union Pacific route may visit numerous cities which he could not reach via the northern lines, like Denver, Pueblo, Salt Lake City, Ogden. In these cities are many objects of interest which he may desire to behold. He may have friends upon some of these routes whom he wishes to visit, and most of these lines allow liberal stopover privileges, of which the traveler may avail himself. Shall he be deprived of all this and compelled to travel by a route which may possibly extend the same privileges, but upon which those privileges are to him utterly useless?

The portion of our country which to-day presents the greatest opportunity for the acquisition of new homes and the opening of new enterprises is that traversed by these transcontinental lines. The United States Government is expending vast sums of money for the purpose of bringing into cultivation hundreds of thousands of acres of land. Many home-seekers visit the northwest, and inducements are held out to such travelers by all the railways. Shall not the passenger in search of a home have the right to go by whatever one of these various routes he selects?

Some lines present much greater scenic attractions than others, and the scenery differs greatly upon different lines. May not a traveler reasonably select his route with reference to the natural beauties

which it offers? May he not properly desire to inform himself  
14 of the extent and character of the country of which he is a citizen? Being familiar with one line, may he not reasonably desire to behold the beauties and the business advantages of some other line?

The education and gratification of the sense of the sublime and the beautiful have been recognized in all ages as distinguishing marks of civilization. Governments often provide at the public expense objects of beauty to be gazed upon by the masses. Can it be said that the desire to behold what is attractive in nature is not a desire which the traveler may reasonably indulge? Is this an age so intensely material that the only test of reasonable satisfaction is business necessity and animal comfort?

The United States Government has reserved and set apart a national park where the citizens of our land may behold the beauties of nature. It has withdrawn from the possible touch of materialism and reserved for the contemplation of present and future ages a portion of our country; and is it to be said that a wish to behold these marvels, which have been set apart for the sole purpose of being looked at, is not a reasonable wish? May not a traveler reasonably elect that route which will enable him to do this? And if it is reasonable to desire to behold the marvels of Yellowstone Park, is it not equally reasonable to wish to behold the scenic beauties of the Denver & Rio Grande?

It may be profitable to bring this contention of the Northern Pacific to the test of a practical illustration. The Union Pacific lines extend



from Ogden to Portland, and they are the only lines by which the traveler, having arrived at Ogden, can reach the city of Portland. From Omaha and Kansas City, as well as from Denver, the Union Pacific maintains a line to Ogden. Passengers on the Missouri River or at Colorado common points desiring to visit Portland can go via the Union Pacific lines, and those lines are the shortest and the quickest and are provided with the best of equipment and service.

It is possible for the traveler leaving Chicago or St. Louis for Portland to go by a great variety of routes to Ogden. He may take the Burlington or the Rock Island or the Missouri Pacific or the Santa Fe. Being arrived at Colorado common points, he may proceed to Ogden via the Denver & Rio Grande or the Colorado Midland, as well as by the Union Pacific.

Now, may the Union Pacific say to the traveling public, "We offer you a line from the East to Portland as short, as quick, as comfortable; therefore you must travel by our route. If you see fit to travel by any other route up to Ogden you must, upon your arrival there, stop, recheck your baggage, rearrange your Pullman accommodations, purchase a local ticket—in short, go as a local passenger from Ogden to Portland. We will make no through route and no through arrangement with any line which leads from the East to Ogden, because we furnish a satisfactory line of our own which you must patronize."

No proposition of that sort would be tolerated for a moment; and why? Because it is instinctively recognized that a passenger at some eastern destination may properly select, and should be permitted to select, the route by which he will reach Ogden on his way to Portland.

So of the situation before us. Just as Ogden is a gateway through which streams of travel converging from various directions naturally pour, so does travel from the East to the Northwest flow through the city of Portland.

The parties were required to furnish a statement showing the number of passengers who actually do, even at the present time, travel between these northwestern points and eastern destinations via Portland. Those statements cover five years—from 1904 to 1908, inclusive—and show the total number of such passengers to be nearly 40,000, an average of 8,000 persons per year, or 22 per day. A good deal of testimony was introduced by the Union Pacific lines to show a desire upon the part of the traveling public to go via Portland, and that testimony does, of itself, conclusively establish the fact; but the most satisfactory proof is the actual record of what daily happens.

We are of the opinion, and find, that a substantial part of those actually making the journey between these points in the Northwest and various points in the East to the east of Colorado common points prefer to travel via the lines which lead finally through the Portland gateway. We are of the opinion that the desire of this portion of the public to use those routes is a reasonable one, and

therefore that the northern route offered by the Northern Pacific is not, within the contemplation of the statute, and as to such travelers, a reasonable or satisfactory through route.

The statute provides that the commission may establish through routes and joint rates, but does not require it to do so. There is, therefore, in this case the further question: Ought we, under all the circumstances, to open this Portland gateway?

The first-class passenger fare from the territory in question is the same to Portland, Tacoma, and Seattle, and the Pullman fare is also the same to these three destinations. The local fare from Portland to Tacoma over the Northern Pacific is \$1.35, the berth fare \$2, and the seat fare 75 cents. If, therefore, a passenger were compelled to pay the transcontinental fare to Portland and the local fare from Portland to Tacoma, it would cost him \$1.35 extra without the Pullman accommodations, whereas if the same rate were applied via Portland which obtains via other gateways this extra local fare, both railroad and Pullman, would be saved.

17 It will hardly be claimed that there is any substantial reason why the 8,000 persons who annually journey through Portland to Tacoma and similar points should be required to bear these additional charges when the Union Pacific lines stand ready to name the same through rate via Portland and to allow the Northern Pacific its full local. If, therefore, this were the actual situation we should have no hesitation in saying that the through route should be established.

In point of fact the Union Pacific at the present time accords to individuals desiring to reach Tacoma what it terms a "side trip." It sells to the passenger a ticket to Portland, to which is attached a coupon entitling him to a first-class ticket from Portland to Tacoma. The Northern Pacific and the Union Pacific occupy a union depot at Portland, and the ticket agent at that station is a joint agent. This coupon must be presented to that joint agent, who delivers to the passenger a Northern Pacific ticket and who pays to the Northern Pacific Company from the Union Pacific Company's funds in his hands the full local fare. Baggage can only be checked to Portland, and the passenger is obliged to have this rechecked at Portland.

The testimony shows that agents at the point of origin as a rule inform passengers desiring to purchase tickets via Portland of the method which must be pursued at Portland in obtaining transportation and checking baggage beyond; that in some instances the passenger has declined to go by this route, but that usually, notwithstanding the difficulties, the passenger, while often demurring at the hardship, takes the route which he has selected.

It appeared that very much annoyance and inconvenience was occasioned at Portland. Sometimes it happened that passengers would board the Northern Pacific train without having exchanged the order for a ticket, under the impression that the order was itself a ticket. The greatest difficulty was experienced in the handling of baggage; in many instances the passenger

would go on under the impression that his baggage had been checked through. Frequently the baggage had not actually arrived at Portland upon the same train with the passenger. These difficulties were oftenest experienced by those who would suffer most from the annoyance and be less able to rectify the mistake—women and children unattended and persons of little experience in traveling. These mistakes are of daily occurrence and occasion very serious inconvenience.

The legality of the present expedient employed by the Union Pacific to work business through this gateway is extremely doubtful. The number of passengers who actually take this route is not materially less than it would be if a through route was established. Some few travelers are doubtless deterred by the difficulties of passing through Portland from taking this line, but the testimony fairly shows that this number is insignificant. The present arrangement imposes a great hardship upon the traveling public and results in practically no benefit to the Northern Pacific. If the Northern Pacific has the right to close this gateway, it should be closed, and the public should understand it; if it has not that right, then the gateway should be opened. The present situation produces much irritation, and is of no substantial benefit to the Northern Pacific.

It should also be noted that under the present arrangement, while the passenger receives his train fare from Portland to destination, he is obliged to pay the additional Pullman fare, whereas it was stated upon the hearing that the Pullman Company would sell, if there were a through route, a ticket to Tacoma for the coast price, which would entitle the passenger to space between Portland and Tacoma.

At the present time the passenger at Chicago may travel on a through ticket via St. Paul and the Canadian Pacific lines to Tacoma, in which event the Canadian Pacific carries the passenger to Sumas and the Northern Pacific from Sumas to Tacoma, a distance of about 160 miles. That passenger may also go via St. Paul and the Great Northern, the Northern Pacific securing the transportation from Seattle to Tacoma, a distance of 41 miles.

We feel that the passenger should also have the right to journey upon a through ticket via Portland, in which event the Northern Pacific would obtain a haul of 140 miles.

The right of a railroad to control its traffic by the making of arrangements for through routes and joint rates for the handling of both passenger and freight business is a thing of value to the railway, which should be protected in so far as it can be without infringing upon the right of the public; but these railroads are public servants and it is their first duty to accord to the public proper facilities.

We are in receipt of numerous letters, of petitions from various communities, from boards of trade and other commercial organizations, asking that this gateway be opened. The railroad commission of Oregon has joined its request, all of which indicates that there is a public demand for this route.

This commission has held that, with respect to freight business, the Northern Pacific and the Great Northern may absolutely control all territory east of and including Colorado common points. It is no hardship to say that, with respect to passenger business, the Northern Pacific must open its lines to this transcontinental travel.

We are of the opinion that the through rates via Portland should be the same as those in effect via the Northern Pacific and its  
20 present connections. No opinion is expressed touching the division of these rates. The public interest requires that this gateway shall be opened; but the terms under which that service is rendered should be just as between the carriers themselves. The local fare upon the line of the Northern Pacific is not of necessity the measure of its division. If the carriers do not agree application can be made to the commission, which must then hear the parties and decide the question.

KNAPP, Chairman, dissenting:

The majority report summarizes concisely the law in respect of the establishment of through routes and joint rates in the following language:

"The statute provides that the commission may establish through routes and joint rates, but does not require it to do so."

It follows, then, that before the commission can lawfully exercise its discretion in this respect, it must find that no reasonable or satisfactory through route exists; and when its jurisdiction is thus established its discretion must be exercised upon sound considerations of justice to the public and the carriers. In this proceeding I conceive that both the jurisdictional facts and the equitable considerations essential to the lawful and proper exercise of the commission's authority are altogether lacking.

It appears from the record and is conceded by the majority that from all Missouri River points and territory east thereof the route already established offers to the public as reasonable fares and as comfortable accommodations as would be afforded by the proposed Portland route, and that in distance and time it is somewhat shorter. This being so, the existing route must, in my opinion, be held both reasonable and satisfactory within the meaning of the statute. Cer-

21 tainly the route shortest in time and distance, and equal to any other in the comforts provided for the traveler, can not be called an unreasonable route; and I assume, without arguing the point, that the term "satisfactory" as used in the statute is practically synonymous with "reasonable." Moreover, it seems to me that the majority err in taking into account, to the extent indicated, the incidental desire of the passenger to stop at intermediate points or to travel by a variety of routes. In my judgment, all that can be asked by a person seeking transportation from, say, Chicago to Tacoma is expeditious and comfortable passage between those two points. If he desires stop-over privileges or to visit cities which are not upon the reason-

able route already established he is asking an additional service or privilege for which extra compensation may properly be exacted.

The absence of opportunities of this sort, or the lack of attractive scenery, does not make the quickest and otherwise satisfactory route an unreasonable one to be condemned as inadequate by the commission.

Much stress appears to be laid upon the inconvenience to passengers over the Union Pacific route of rechecking baggage and exchanging tickets at Portland. Even conceding that this is germane to the issue, it seems to me to arise largely because the Union Pacific, in order to secure the long haul to Portland, advertises a through route to Puget Sound which does not in fact exist. Under the present practice of the Union Pacific, the legality of which is not now considered, the passenger to Puget Sound pays no extra fare in order to gratify his desire to travel by that route, and it would seem that the trouble of rechecking baggage and exchanging tickets at Portland is fully compensated by the business convenience of stop-over privileges and other advantages of an incidental or personal nature.

But assuming, though not conceding, that the jurisdictional basis for an order exists, there are controlling reasons, as I think, for declining to take such action. The expensive terminals of the Northern Pacific at Tacoma and Seattle were not provided for local business from Portland, and apparently could not be afforded for that local travel. Those terminals are supported by traffic over the whole system. The order of the commission in this case in effect places the Union Pacific in substantially the same position as it would be if it had built its own railroad from Portland to Tacoma, some 140 miles. Except in so far as the regulating statute may prevent, carriers are at liberty to take such measures as may be proper to secure and retain traffic upon their own lines. I can not agree to a ruling in this matter which would go far to commit us to the proposition that a company might now build a railroad from, say, Trenton, N. J., to Crown Point, Ind., and successfully demand that the Pennsylvania system be required to join it in through routes east or west between New York and Chicago. Suppose the Northern Pacific ended at Tacoma and the Oregon Railroad and Navigation extended from Portland to Tacoma. Would it be just to require the Northern Pacific to unite with the Oregon Railroad and Navigation in joint rates to Seattle? In the absence of a real public necessity it seems plainly inequitable, by compelling connections and through routing, to take from a carrier traffic for the accommodation of which it has expended millions of dollars and practically turn over that traffic with the use of the carrier's terminals to a competitor which does not see fit to provide for itself the needful railway and terminals.

With reference to the exercise of discretion, it is of course true that the conclusions of the majority in this case will not be controlling in other proceedings as each case must be judged in the light of its special conditions and circumstances. Nevertheless, the fact that the order made herein, if followed in cases of a similar character, will reverse the common practice of carriers of

reserving to themselves the long haul where they can furnish satisfactory accommodation—a practice justified by the business welfare of the carrier, and nowise at variance with its public duty—suggests to my mind that the commission should not compel through routes and joint rates except upon a disclosure of real and substantial public inconvenience and hardship which could not otherwise be avoided. In my judgment no such disclosure has been made in this case.

I am authorized to say that Commissioner Clark unites in this dissent.

24

*Order.*

At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 4th day of May, A. D. 1909.

Present: Martin A. Knapp, Judson C. Clements, Charles A. Prouty, Francis M. Cockrell, Franklin K. Lane, Edgar E. Clark, James S. Harlan, commissioners.

No. 1544.

In the matter of through passenger routes via Portland, Oreg.

This case being at issue upon complaint and answers on file, and the matters involved having been fully heard and submitted, and it appearing that the carriers named in paragraph 2 of this order have neglected and refused to voluntarily establish through routes and joint rates for the transportation of passengers and the baggage of such passengers over their lines of railway from Chicago, Ill., and other points on the Chicago & North Western Railway between Chicago, Ill., and Council Bluffs, Iowa, including the latter point, and from points on the Union Pacific Railroad between Colorado common points, so called, on the west, and Omaha, Nebr., and Kansas City, Mo., on the east, including the latter two points, via Portland, Oreg., to points on the Northern Pacific Railway, in the State of Washington, between Portland, Oreg., and Seattle, Wash., including the latter point, and in the opposite direction from said points on the Northern Pacific Railway, via Portland, Oreg., to said points on the Union Pacific Railroad and on the Chicago & North Western Railway; and it further appearing that no reasonable or satisfactory through route for such transportation exists between any of said eastern points on the one hand and any of said western points on the other hand:

25

It is ordered, That the Chicago & North Western Railway Company, the Union Pacific Railroad Company, the Oregon Short Line Railroad Company, the Oregon Railroad & Navigation Company and the Northern Pacific Railway Company, be, and they are hereby notified and required to establish on or before July 1, 1909, and maintain in force thereafter, during a period of not less than two years, through routes and joint rates applicable thereto, for the transportation of passengers and the baggage of such pas-

sengers, from Chicago, Ill., and other points on the Chicago & North Western Railway between Chicago and Council Bluffs, Iowa, including the latter point, and from points on the Union Pacific Railroad between Colorado common points, so called, on the west and Omaha, Nebr., and Kansas City, Mo., on the east, including the latter two points, via Portland, Oreg., to points in the State of Washington, on the Northern Pacific Railway between said Portland and Seattle, Wash., including the latter point; said joint rates to be the same as the joint rates contemporaneously in effect between said points via the Northern Pacific Railway and its present connections.

It is further ordered, That the carriers named in paragraph 2 of this order be, and they are hereby, notified and required to establish on or before said July 1, and maintain in force thereafter during a period of not less than two years, through routes and joint rates applicable thereto, for the transportation of passengers and the baggage of such passengers, from said points on the Northern Pacific Railway via Portland, Oreg., to said points on the Union Pacific Railroad and to said points on the Chicago & North Western Railway, including Omaha, Nebr., Kansas City, Mo., and Chicago, Ill., said joint rates to be the same as the joint rates contemporaneously in effect between said points via the Northern Pacific Railway and its present connections.

26 And it is further ordered, That said carriers be, and they are hereby, authorized to make effective upon three days' notice to the public and to the Interstate Commerce Commission, given in the manner required by law, the through routes and joint rates said carriers are by this order required to establish and maintain in force, but the tariffs must contain a reference to the number of this case and show that they are issued under the authority hereby granted.

27 It is true, as found by the commission, that the testimony upon such hearing showed a large number of passengers, an average of about eight thousand (8,000) a year, have been traveling over the Union Pacific lines through Portland between various eastern points and Puget Sound points upon the Northern Pacific, and your orator has always declined to make joint rates and to sell through tickets and permit through checks of baggage via that line, furnishing as it does a line of its own open to the same passengers which is reasonable and satisfactory and which would give your orator a haul of either nineteen hundred (1,900) or one thousand (1,000) miles, as the case may be, as compared with the haul from Portland to Puget Sound points averaging about one hundred forty (140) miles. It is not true, as stated in the opinion of the commission, that the number of passengers who actually take this route would not be materially increased by establishing a through joint route, selling through tickets and checking through baggage via Portland. The testimony taken before the commission showed beyond any contro-



very that the number of passengers taking that route would be greatly increased and the revenue of your orator greatly diminished by establishing the aforesaid joint route through Portland. The whole testimony of the large number of witnesses examined on behalf of the Union Pacific lines was that the travel via the Union Pacific and Portland would be largely increased by opening the proposed joint route, and no testimony to the contrary was introduced by any party or given by any witness. It was also shown by undisputed testimony that the Union Pacific lines had for many years been advertising a through route to Puget Sound via Portland; that their practice is to sell attached to their Portland ticket a coupon or order,

in form not shown in the testimony, entitling the holder on  
 28 arrival at Portland to obtain a ticket at the proper offices of the Oregon Railroad & Navigation Company at Portland without further payment, entitling the holder to ride over the Northern Pacific Railway from Portland to Puget Sound, and entitling him to recheck his baggage at Portland for destination. This Northern Pacific ticket is purchased by the Union Pacific lines and given to their passengers at Portland. The testimony also showed that such passengers frequently understand that the tickets furnished them in the east by the Union Pacific lines are through tickets to Puget Sound points on the Northern Pacific and that their baggage is checked through, and that any unusual annoyance at Portland, such as failure on the part of such passengers to secure tickets and to recheck their baggage, is caused by this misunderstanding resulting from agents of the Union Pacific holding out their route via Portland as a through route to Puget Sound and from their professing to ticket passengers through.

On the said hearing not a word of testimony was introduced to show that either the cold, or the snow, or the water make it at any time of the year less safe or comfortable to travel via your orator's line than it would be via the Union Pacific line through Portland. All that is said in the commission's opinion upon that subject is said without the least support from any testimony and can be maintained only in so far as true in fact and in so far as the commission may take judicial notice of weather conditions. In point of fact had testimony of the kind been offered your orator would have been prepared to show that its route at all seasons of winter or summer is as free from interruptions and delays by snow, water, and the weather, and that it is, so far as weather is concerned, as comfortable for passenger travel as the Union Pacific route through Portland. In fact either  
 route is at times interrupted by snow or water, but your orator's  
 29 route not more so than the Union Pacific and almost invariably when one route is interrupted similar conditions prevail upon the other route.

It was conclusively shown in the testimony and is admitted in the commission's opinion that your orator's route in point of service and in so far as concerns the transportation itself is superior to the route through Portland, and that the considerable number of passengers,



who prefer the route through Portland, base such preference wholly upon their wish to stop over at Portland or in the country tributary to the Union Pacific lines before reaching Portland for business or pleasure, or their desire to see the country tributary to those lines.

Your orator's line reaching Portland through Tacoma and Seattle, its rates to Puget Sound points and to Portland are the same, and the Union Pacific lines in order to compete to Puget Sound points are obliged to make the Portland rate. The local fare on your orator's line from Portland to Puget Sound points varies to different points, but averages substantially five dollars, while your orator's revenue on every passenger it carries from eastern termini or from Billings is very much larger. The Seattle and Tacoma terminals of your orator have been purchased and put into condition for use at the expense of many millions of dollars and, as before stated, were established largely for the long haul business and in the reasonable expectation of obtaining all for which it furnishes accommodations and facilities superior to those of other lines. The operation of the defendant's order is to deprive your orator of a large amount, how much cannot be determined, of this through travel and give it in lieu thereof the short haul from Portland to Puget Sound, depriving your orator of the reasonable and legitimate value of its railway and particularly of its Seattle and Tacoma terminals and turning the use thereof

30 over to the Union Pacific lines without adequate compensation.

The enforcement of the order before set forth would deprive your orator of revenue exceeding two thousand dollars (\$2,000.00), exclusive of interest and costs, and would result to your orator's irreparable injury.

Inasmuch as your orator has no adequate remedy at law and has only a remedy in equity, it prays that a decree be entered herein setting aside and annulling said order of the defendant Interstate Commerce Commission and perpetually enjoining the enforcement thereof and perpetually enjoining the said defendant, its members, their agents, servants, and representatives, from enforcing said order or from taking any steps or instituting any proceedings for the enforcement thereof, and for a temporary injunction to the effect above stated pending this suit, and for such other and further relief as justice and equity may require.

Your orator further prays for a writ of subpoena, directed to the said Interstate Commerce Commission, commanding it at a certain day and under a certain penalty therein to be specified, to appear before your honors in this honorable court, and then and there full, true, and complete answer make in the premises; but not under oath (an answer under oath being expressly waived), and to stand to and abide such order and decree herein as to your honors may seem meet to equity and good conscience.

NORTHERN PACIFIC RAILWAY COMPANY,  
By J. M. HANNAFORD,

*Second Vice-President,*

CHARLES W. BUNN,  
*Solicitor and of Counsel,*

31 STATE OF MINNESOTA,  
*County of Ramsey, ss:*

J. M. Hannaford, being first duly sworn, on oath states that he is the second vice-president of the Northern Pacific Railway Company, and as such has general charge of its traffic; that he has read the foregoing bill of complaint, and the same is true to the best of his knowledge, information, and belief.

J. M. HANNAFORD.

Subscribed and sworn to before me this 24th day of May, 1909.

W. T. FRANCIS,

*Notary Public, Ramsey County, Minn.*

My commission expires April 5, 1911.

[Notarial seal.]

(Endorsed:) Bill of complaint. Filed May 25th, 1909. Henry D. Lang, clerk.

32 Thereafter and on the same day the following praecipe for appearance for complainant and order of appearance was filed and entered of record in said cause, to wit:

33 Circuit Court of the United States, District of Minnesota,  
Third Division.

NORTHERN PACIFIC RAILWAY COMPANY	} Appearance.
<i>vs.</i>	
THE INTERSTATE COMMERCE COMMISSION.	

The clerk will enter my appearance for the complainant, and he is requested not to issue a chancery subpoena herein.

Dated St. Paul, Minnesota, May 25th, A. D. 1909.

CHARLES W. BUNN,

*Complainant's Solicitor.*

(Endorsed:) Appearance of C. W. Bunn for complainant. Filed May 25th, 1909. Henry D. Lang, clerk. Entered C. R. "C" page 145.

34 United States Circuit Court, District of Minnesota, Third Division.

Chancery Common Rule and Order Book.

May 25th, 1909.

NORTHERN PACIFIC RAILWAY COMPANY	} Equity No. 893.
<i>vs.</i>	
INTERSTATE COMMERCE COMMISSION.	

The complainant having filed a bill of complaint in this cause on application of C. W. Bunn, solicitor, ordered that no writ of subpoena issue as herein directed. Page 9.

- 35 United States Circuit Court, District of Minnesota, Third Division. Chancery Common Rule and Order Book.

May 25th, 1909.

NORTHERN PACIFIC RAILWAY COMPANY	} Equity No. 893.
<i>vs.</i>	
INTERSTATE COMMERCE COMMISSION.	

This day comes the complainant, the Northern Pacific Railway Company, by Charles W. Bunn, solicitor, on whose motion it is ordered that his appearance be, and the same is hereby, entered as solicitor for said complainant. Page 145.

Thereafter and on the 27th day of May the following certificate of the Attorney-General was filed in said cause, to wit:

- 36 In the Circuit Court of the United States, District of Minnesota, Third Division.

NORTHERN PACIFIC RAILWAY CO.	} 893, Equity.
<i>vs.</i>	
INTERSTATE COMMERCE COMMISSION.	

*To the clerk of said court:*

I hereby certify that the above entitled cause now pending in said court is a suit in equity brought by the Northern Pacific Railway Company against the Interstate Commerce Commission, under the act of Congress entitled "An act to regulate commerce," approved February 4, 1887, as amended, and that said suit is in my opinion a case of general public importance.

I therefore request that, complying with the provisions of the act of Congress entitled "An act to expedite the hearing and determination of suits in equity pending or hereafter brought under the act of February 4, 1887, entitled 'An act to regulate commerce,'" approved February 11, 1903, you will file this certificate among the records of the above entitled cause, and immediately furnish a copy thereof to each of the circuit judges of the eighth circuit, to the end that said case shall be given precedence over other cases in said court, and be assigned for hearing at the earliest practicable date before not less than three of the circuit judges of said circuit, as is provided by the said act of February 11, 1903.

GEO. W. WICKERSHAM,  
*Attorney-General.*

WASHINGTON, D. C., May 25, 1909.

(Endorsed:) Certificate of the Attorney-General under the acts of Feby. 11, 1903, etc. Filed, May 27th, 1909. Henry D. Lang, clerk.

- 37 And thereafter on the same day the following certificate of clerk of delivery of certified copies of Atty.-General's certificate to U. S. circuit judges, was filed in said cause, to wit:

20 INTERSTATE COMMERCE COMMISSION VS. N. PAC. RY. CO.

38 United States Circuit Court, District of Minnesota, Third Division.

NORTHERN PACIFIC RAILWAY COMPANY }  
vs. } Equity No. 893.  
INTERSTATE COMMERCE COMMISSION. }

UNITED STATES OF AMERICA.

*District of Minnesota, ss.*

I, Henry D. Lang, clerk of the Circuit Court of the United States for the district of Minnesota, do hereby certify that at St. Paul, in the county of Ramsey, district of Minnesota, on the 27th day of May, A. D. 1909, I made and delivered to each of the circuit judges of the eighth circuit, to wit: Hon. Walter H. Sanborn, Hon. Willis Van Devanter, Hon. William C. Hook, Hon. Elmer B. Adams, personally, a duly certified copy of the certificate of the Attorney-General, this day filed in this case to expedite the same, as provided by the act of February 11, 1903.

In witness whereof I have hereunto set my hand and official seal, this 27th day of May, A. D. 1909.

[SEAL OF COURT.]

HENRY D. LANG, *Clerk.*

(Endorsed:) Certificate of clerk of delivery of certified copies of Atty.-General's certificate to U. S. circuit judges. Filed May 27th, 1909. Henry D. Lang, clerk.

39 Thereafter and on the 28th day of May, 1909, the following appearance for defendant and order was entered in said cause, to wit:

40 Circuit Court of the United States, District of Minnesota, Third Division.

NORTHERN PACIFIC RAILWAY COMPANY }  
vs. } Appearance,  
THE INTERSTATE COMMERCE COMMISSION. }

The clerk will enter our appearance for the defendant in the above-entitled cause.

Dated St. Paul, Minnesota, May 28th, 1909.

CHARLES C. HOUT,

LUTHER M. WALTER,

*Defendant's Solicitors.*

(Endorsed:) Appearance of Chas. C. Hout and Luther M. Walter for defendant. Filed May 28th, 1909. Henry D. Lang, clerk. Entered C. R. "C," page 145.

41 United States Circuit Court, District of Minnesota, Third Division.

Chancery Common Rule and Order Book.

May 28, 1909.

NORTHERN PACIFIC RAILWAY COMPANY	} Equity No. 893.
<i>vs.</i>	
INTERSTATE COMMERCE COMMISSION.	

This day comes the defendant Interstate Commerce Commission by Charles C. Houpt and Luther M. Walter, solicitors, on whose motion it is ordered that the appearance of said defendant be, and the same is, hereby entered. Page 145.

Thereafter and on the same day the following record of trial was entered of record in said cause, to wit:

42 United States Circuit Court for the District of Minnesota, Third Division.

Term minutes. June term. A. D. 1908. May 28th, 1909.

Friday morning.

Court opened pursuant to adjournment.

Present: Hon. Walter H. Sanborn, Hon. Willis Van Devanter, Hon. William C. Hook, Hon. Elmer B. Adams, circuit judges, Henry D. Lang, clerk.

43 United States Circuit Court for the District of Minnesota, Third Division.

Term minutes. December term. A. D. 1908. May 28th, 1909.

NORTHERN PACIFIC RAILWAY COMPANY	} No. 893 C. Equity.
<i>vs.</i>	
THE INTERSTATE COMMERCE COMMISSION.	

This day come the parties to this cause by their respective solicitors, Mr. Charles W. Bunn appearing on behalf of the complainant, and Mr. Luther M. Walter appearing on behalf of the defendant.

Whereupon the complainant, by Mr. Charles W. Bunn its solicitor, moves the court for an order restraining the defendant, The Interstate Commerce Commission, during the pendency of this action and until the further order of this court, from enforcing and putting into effect the order of May 4th, A. D. 1909, No. 1541, set out and referred to in the bill of complaint, herein.

Mr. Charles W. Bunn argues said motion on behalf of the complainant.

Mr. Luther M. Walter argues in opposition thereto on behalf of the defendant.

Mr. Charles W. Bunn argues in reply and conclusion upon said motion on behalf of the complainant; and after hearing the arguments and statements of the solicitors for the respective parties hereto thereon, the same is duly submitted to and by the court taken under advisement.

44 United States Circuit Court for the District of Minnesota,  
Third Division.

Term minutes. December term. A. D. 1908. May 28th, 1909.

Ordered: That this court do now adjourn until tomorrow morning at ten o'clock.

A true record.

Attest:

HENRY D. LANG, *Clerk*.

45 And on the same day the following papers and exhibits were filed in said cause, viz:

Report and order of the commission, decided May 4, 1909.

Brief of defendant.

Brief of complainant.

Brief of Union Pacific Rd. Co. et al.

Map, showing N. P. Ry. System and C. B. & Q. R. R. System.

Stenographer's minutes, before the Interstate Commerce Commission Docket No. 1544. In the matter of Through Passenger Routes via Portland, Oregon.

46 Opinion No. 938.

Before the Interstate Commerce Commission.

No. 1544.

In the matter of through passenger routes via Portland, Oreg.

Decided May 4, 1909.

*Report and order of the Commission.*

(Endorsed:) Filed May 28th, 1909. Henry D. Lang, clerk.

In the matter of through passenger routes via Portland, Oreg.

Submitted April 3, 1909. Decided May 4, 1909.

The Northern Pacific Railway Company, the Union Pacific Lines, and the Chicago & Northwestern Railway Company ordered to join in the sale of through passenger tickets between Seattle and other points in the northwest and eastern destinations, via Portland, Oreg., and to accord through facilities, like the checking of baggage, over this route.

A. H. Lossow for the Interstate Commerce Commission.

C. W. Bunn for Northern Pacific Railway Company.

S. A. Lynde for Chicago & Northwestern Railway Company.

N. H. Loomis, P. L. Williams, W. W. Cotton, and F. C. Dillard for Union Pacific Railroad Company, Oregon Short Line Railroad Company, and Oregon Railroad & Navigation Company.

*Report of the Commission.*

PROT TY, Commissioner:

The Northern Pacific Railway Company declines to join in the sale of through tickets between Seattle and other points in the northwest and eastern destinations via Portland, Oreg., and to accord through facilities, like the checking of baggage, over this route, and this leads to much annoyance and has been the source of much complaint. The commission, being in receipt of complaints from the traveling public, and deeming the subject of sufficient public importance to require investigation, has instituted this proceeding upon its own motion for the purpose of determining the right of the matter and, if necessary, entering an order for the establishment of through routes and joint rates.

The Northern Pacific Railway Company, the Chicago & Northwestern Railway Company, and the Union Pacific lines, namely, the Union Pacific Railroad Company, the Oregon Short Line Railroad Company, and the Oregon Railroad & Navigation Company, were made parties and required to answer. The Northern Pacific justifies its refusal. The answers of the various Union Pacific companies are in the nature of complaints themselves; they aver that a through route should, for reasons set forth, be opened, and ask that the Commission establish such joint rates.

The parties have furnished certain information called for by the commission itself, have introduced such testimony as they severally desired, and have presented the case on brief and oral argument.

In this discussion Tacoma will be taken as illustrative of those points in the northwest which are involved. The Northern Pacific Railway extends from St. Paul to Tacoma, and it also operates a line from Seattle through Tacoma to Portland. Numerous lines of railway lead from Chicago to St. Paul.

The Union Pacific lines extend from Omaha to Portland, and various other lines connect Chicago and Omaha.

Hence, a passenger at Chicago can reach Tacoma either via St. Paul and the Northern Pacific or via Omaha and the Union Pacific lines to Portland and from Portland via the Northern Pacific.

The Chicago, Burlington & Quincy Railroad, which is owned and controlled by the Northern Pacific and the Great Northern jointly, runs from Omaha, Kansas City, and other Missouri River points to Billings, Mont., where it connects with the Northern Pacific. The Union Pacific lines extend from Omaha, Kansas City, and other Missouri River points to Portland. Passengers at the Missouri River may therefore travel to Tacoma either via the Burlington route to Billings and thence via the Northern Pacific or via the Union Pacific lines to Portland and thence via the Northern Pacific.

Since practically all passenger traffic between territory east of the Missouri River can and does pass through Chicago and Missouri River points en route for Tacoma, the points above selected fairly illustrate the general situation and the question presented.

When the northern route is used the Northern Pacific may carry the passenger from St. Paul to Tacoma, a distance of 1,300 miles, and must carry him from Billings, a distance of about 1,000 miles, while if the Union Pacific route is selected, the Northern Pacific can only transport the passenger from Portland to Tacoma, a distance of 140 miles. The Northern Pacific declines to make joint rates with the Union Pacific lines, for the reason that to do so would be to encourage the movement of travel through Portland, and thereby to deprive it of the privilege of carrying the passenger by the other route and thus obtaining the long haul.

The act to regulate commerce empowers this commission to establish a through route and a joint rate in cases like the present, provided no satisfactory through route already exists. The Northern

49 Pacific insists that it already affords a satisfactory through route to points upon its line north of Portland, and hence that the commission has no jurisdiction to open the Portland gateway, even though, as a matter of discretion, it might be of the opinion that this ought to be done.

In *Pacific Coast Lumber Mfrs. Assn. v. Northern Pacific Ry. Co.*, 14 I. C. C. Rep., 51, the commission passed upon an application to open the Portland gateway to the movement of lumber from Tacoma and similar points to eastern destinations over the lines of the Union Pacific and its connections. In that proceeding we held that the Northern Pacific and Great Northern already furnished a satisfactory route to Colorado common points, which are Cheyenne, Denver, Pueblo, and points in that general line north and south, and all territory east, but that there was no satisfactory through route to territory west of Colorado common points, and we established joint rates applicable to that territory to which no satisfactory route was found to exist.



Up to the time that case was decided, and indeed when this proceeding was begun, there was no joint through passenger tariff between the Union Pacific lines and the Northern Pacific through Portland. Since then the Northern Pacific has expressed a willingness to establish joint passenger schedules from Colorado common points and territory west to Tacoma and similar points and such tariffs are now in effect. It still refuses to make joint rates from territory east of Colorado common points. It insists that the same considerations which led us to hold in case of lumber that a satisfactory route already existed by the northern lines to that territory must control our action in the present case.

In the report of that case, at page 59, we said:

"Attention should be called to the fact that a wide difference exists between a reasonable through route for the movement of freight and one for passenger traffic. There enters into the passenger service a personal element which does not exist in the case of property. We might well say that a passenger should have the right to journey from Seattle to Omaha via Portland with the conveniences of a through service, although a carload of lumber was not entitled to that privilege."

This was not intended to indicate what would be a satisfactory passenger route, but simply to reserve for consideration that question, which is now for the first time before the commission in this proceeding.

In order to defeat the jurisdiction of the commission the existing route must, in the language of the statute, be "reasonable or satisfactory." This, we think, is equivalent to "reasonably satisfactory." The dissatisfaction of the passenger must spring from some reason and not be the product of mere whim.

50 The first inquiry is, With respect to whom must this route be satisfactory? This same question might arise in case of freight traffic. A route satisfactory to one kind of freight might not be satisfactory with respect to another. Most commodities are indifferent to heat and cold, and it is therefore immaterial whether they are carried through high or low temperatures. Fruits and vegetables may be injured and indeed totally destroyed by freezing or overheating. It might well happen, therefore, that a route entirely satisfactory as to most kinds of freight would not be satisfactory to these perishable articles.

In the case of freight it is possible to distinguish between different commodities and to establish a through route as to one article and not as to another; but with passengers this can not be done, since whatever joint rate is ordered must be open to the general public. It would seem, therefore, that if the existing route is unsatisfactory to any considerable portion of the public desiring to use some route, then it should not be held reasonably satisfactory.

To state this in another way: The caprice or even the proper desire of an occasional passenger should not govern, but if any considerable part of the traveling public reasonably prefer to use some other route

rather than the one existing, then the existing route can not be called a reasonable and satisfactory through route. We ought to inquire, therefore, in the present case, whether any substantial part of the entire body of travelers moving between these points in the northwest and eastern destinations does reasonably desire to travel via Portland. If so, this commission has jurisdiction to open that gateway. And this is the reasonable conclusion from all the provisions of the act which bear directly or indirectly upon this establishment of through routes and joint rates. Under the original act it was provided that different railroad companies should interchange traffic with one another; but the act contained no provision by which the details of this interchange could be determined, and the courts held that, as at the common law, it was for the carriers to determine for themselves what arrangements for through business should be entered into and upon what terms. The act was finally amended so as to give to the commission authority to prescribe through routes and joint rates, and to fix the terms and conditions under which these routes should be operated; but the commission was only authorized to do this where no reasonable or satisfactory route already existed. The plain intent of all these provisions comes to this: The public shall be properly served. So long as it is properly served the carriers may themselves determine upon the means by which the service shall be rendered. The fundamental question in every case is, Are the public necessities, under all the circumstances, fairly met? Such is 51 the question here. Considering fairly the legitimate desires of those who use these railway lines, ought the facilities of through travel via the Portland gateway to be accorded, or is the present arrangement reasonable and satisfactory?

By what test are we to determine what is reasonable and satisfactory? The Northern Pacific contends that the same considerations which apply in case of freight must also control in case of passengers; that reference can only be had to the incidents of the transportation itself; that if it offers a route by which the passenger can be taken as quickly and with the same physical comfort, then the passenger can not reasonably prefer another route.

The distance from both Chicago and the Missouri River to Tacoma via St. Paul or Billings is somewhat less than via Portland. From Chicago via St. Paul the distance is 2,319 miles, while via Omaha and Portland it is 2,436 miles. From Omaha via Billings the distance is 1,909 miles; via Portland, 1,943 miles. The running time from Chicago and the Missouri River is somewhat less via St. Paul and Billings than via Portland. The train service from St. Paul is equally good with that from Omaha. At the present time there is but one through train from the Missouri River via Billings, with a second train involving a change of cars at Billings and a lay over. It was stated upon the hearing that another through train would be put on in the near future and permanently maintained.

On the whole it seems to be true that from the greater part of the territory in question, and we are only considering the matter in its

broad aspect, the distance via the northern lines is somewhat shorter and the time somewhat less. The passenger goes in as good a car and is provided with as good a berth and as good a meal. Beyond this the Northern Pacific declares the passenger must not look.

It is evident that, looking entirely to the physical comfort of the passengers, the northern line is not always as satisfactory as the southern. That route traverses a section of country where the cold is much more severe in winter and longer continued. The snows are more frequent and deeper. Interruption of travel from snow blockades and similar causes is much greater. Passengers might find it not only less comfortable, but in some instances even dangerous, to take the journey by this route, although by the southern line it might be undertaken with comfort. Upon the other hand, during the heated period of the summer the northern route may be much cooler and cleaner than the southern.

So, too, looking entirely to the certainty with which one reaches in a given time his journey's end, the southern route may at times present advantages over the northern, which would lead a reasonable man to prefer it. The severe weather during the winter months inter-

52 rupts to some extent travel upon that line. The period of high water comes at a different time upon the southern lines than upon the northern. Communication may be more certain at one period of the year by one line and at some other period by the other line. We are considering the character of these routes, not with respect to a single day or a single season, but with respect to the whole year and to a series of years. May it not be well said that the traveling public, even if the test suggested by the Northern Pacific were the correct one, even if the only inquiry was whether the passenger could reach his journey's end with certainty and comfort, are entitled to have these two routes open; and can it be said that the public should be confined at all times to the use of either one?

But these are minor considerations. The real question is that suggested by the commission in the extract from the Lumber case, already given. Is there not a distinction between inanimate freight and human beings? Does not the element of personal preference properly enter into the determination of this question?

Let this situation be clearly understood. If the passenger travels by the Northern Pacific route, he can pass, broadly speaking, through no territory lying west of the Missouri River and south of the main line of the Northern Pacific. If he goes via Portland, he can select any one of a great variety of routes traversing this southern territory as far as Ogden. From Ogden he must go by the Union Pacific lines. The question is, therefore, whether the passenger desiring to go from some eastern point to Tacoma must patronize the northern route or whether he may properly prefer to pass over some one of these southern routes.

A passenger by the Union Pacific route may visit numerous cities which he could not reach via the northern lines, like Denver, Pueblo, Salt Lake City, Ogden. In these cities are many objects of interest,

which he may desire to behold. He may have friends upon some of these routes whom he wishes to visit, and most of these lines allow liberal stop-over privileges, of which the traveler may avail himself. Shall he be deprived of all this and compelled to travel by a route which may possibly extend the same privileges, but upon which those privileges are to him utterly useless?

The portion of our country which to-day presents the greatest opportunity for the acquisition of new homes and the opening of new enterprises is that traversed by these transcontinental lines. The United States Government is expending vast sums of money for the purpose of bringing into cultivation hundreds of thousands of acres of land. Many home seekers visit the northwest, and inducements are held out to such travelers by all the railways. Shall not the passenger in search of a home have the right to go by whatever one of these various routes he selects?

53 Some lines present much greater scenic attractions than others, and the scenery differs greatly upon different lines. May not a traveler reasonably select his route with reference to the natural beauties which it offers? May he not properly desire to inform himself of the extent and character of the country of which he is a citizen? Being familiar with one line, may he not reasonably desire to behold the beauties and the business advantages of some other line?

The education and gratification of the sense of the sublime and the beautiful have been recognized in all ages as distinguishing marks of civilization. Governments often provide at the public expense objects of beauty to be gazed upon by the masses. Can it be said that the desire to behold what is attractive in nature is not a desire which the traveler may reasonably indulge? Is this an age so intensely material that the only test of reasonable satisfaction is business necessity and animal comfort?

The United States Government has reserved and set apart a national park, where the citizens of our land may behold the beauties of nature. It has withdrawn from the possible touch of materialism and reserved for the contemplation of present and future ages a portion of our country; and is it to be said that a wish to behold these marvels which have been set apart for the sole purpose of being looked at is not a reasonable wish? May not a traveler reasonably elect that route which will enable him to do this? And if it is reasonable to desire to behold the marvels of Yellowstone Park, is it not equally reasonable to wish to behold the scenic beauties of the Denver & Rio Grande?

It may be profitable to bring this contention of the Northern Pacific to the test of a practical illustration. The Union Pacific lines extend from Ogden to Portland, and they are the only lines by which the traveler, having arrived at Ogden, can reach the city of Portland. From Omaha and Kansas City, as well as from Denver, the Union Pacific maintains a line to Ogden. Passengers on the Missouri River or at Colorado common points desiring to visit Portland can go via the Union Pacific lines, and those lines are the shortest and the quickest and are provided with the best of equipment and service.

It is possible for the traveler leaving Chicago or St. Louis for Portland to go by a great variety of routes to Ogden. He may take the Burlington or the Rock Island or the Missouri Pacific or the Santa Fe. Being arrived at Colorado common points, he may proceed to Ogden via the Denver & Rio Grande or the Colorado Midland, as well as by the Union Pacific.

Now, may the Union Pacific say to the traveling public, "We offer you a line from the East to Portland as short, as quick, as comfortable; therefore you must travel by our route. If you see fit to travel by any other route up to Ogden, you must, upon your arrival there, stop, recheck your baggage, rearrange your Pullman accommodations, purchase a local ticket—in short, go as a local passenger from Ogden to Portland. We will make no through route and no through arrangement with any line which leads from the East to Ogden, because we furnish a satisfactory line of our own, which you must patronize."

No proposition of that sort would be tolerated for a moment; and why? Because it is instinctively recognized that a passenger at some eastern destination may properly select, and should be permitted to select, the route by which he will reach Ogden on his way to Portland.

So of the situation before us. Just as Ogden is a gateway through which streams of travel converging from various directions naturally pour, so does travel from the east to the northwest flow through the city of Portland.

The parties were required to furnish a statement showing the number of passengers who actually do, even at the present time, travel between these northwestern points and eastern destinations via Portland. Those statements cover five years—from 1904 to 1908, inclusive—and show the total number of such passengers to be nearly 40,000, an average of 8,000 persons per year or 22 per day. A good deal of testimony was introduced by the Union Pacific lines to show a desire upon the part of the traveling public to go via Portland, and that testimony does, of itself, conclusively establish the fact; but the most satisfactory proof is the actual record of what daily happens.

We are of the opinion, and find, that a substantial part of those actually making the journey between these points in the northwest and various points in the east to the east of Colorado common points prefer to travel via the lines which lead finally through the Portland gateway. We are of the opinion that the desire of this portion of the public to use those routes is a reasonable one, and therefore that the northern route offered by the Northern Pacific is not, within the contemplation of the statute, and as to such travelers, a reasonable or satisfactory through route.

The statute provides that the commission may establish through routes and joint rates, but does not require it to do so. There is, therefore, in this case the further question: Ought we, under all the circumstances, to open this Portland gateway?

The first-class passenger fare from the territory in question is the same to Portland, Tacoma, and Seattle, and the Pullman fare is also the same to these three destinations. The local fare from Portland to Tacoma over the Northern Pacific is \$4.35, the berth fare \$2, and the seat fare 75 cents. If, therefore, a passenger were compelled to pay the transcontinental fare to Portland and the local fare  
 55 from Portland to Tacoma, it would cost him \$4.35 extra without the Pullman accommodation, whereas if the same rate were applied via Portland which obtains via other gateways this extra local fare, both railroad and Pullman, would be saved.

It will hardly be claimed that there is any substantial reason why the 8,000 persons who annually journey through Portland to Tacoma and similar points should be required to bear these additional charges, when the Union Pacific lines stand ready to name the same through rate via Portland and to allow the Northern Pacific its full local. If, therefore, this were the actual situation, we should have no hesitation in saying that the through route should be established.

In point of fact the Union Pacific at the present time accords to individuals desiring to reach Tacoma what it terms a "side trip." It sells to the passenger a ticket to Portland, to which is attached a coupon entitling him to a first-class ticket from Portland to Tacoma. The Northern Pacific and the Union Pacific occupy a union depot at Portland, and the ticket agent at that station is a joint agent. This coupon must be presented to that joint agent, who delivers to the passenger a Northern Pacific ticket and who pays to the Northern Pacific Company from the Union Pacific Company's funds in his hands the full local fare. Baggage can only be checked to Portland and the passenger is obliged to have this rechecked at Portland.

The testimony shows that agents at the point of origin as a rule inform passengers desiring to purchase tickets via Portland of the method which must be pursued at Portland in obtaining transportation and checking baggage beyond; that in some instances the passenger has declined to go by this route, but that usually, notwithstanding the difficulties, the passenger, while often demurring at the hardship, takes the route which he has selected.

It appeared that very much annoyance and inconvenience was occasioned at Portland. Sometimes it happened that passengers would board the Northern Pacific train without having exchanged the order for a ticket, under the impression that the order was itself a ticket. The greatest difficulty was experienced in the handling of baggage; in many instances the passenger would go on under the impression that his baggage had been checked through. Frequently the baggage had not actually arrived at Portland upon the same train with the passenger. These difficulties were oftenest experienced by those who would suffer most from the annoyance and be less able to rectify the mistake—women and children unattended and persons of little experience in traveling. These mistakes are of daily occurrence and occasion very serious inconvenience.

The legality of the present expedient employed by the Union Pacific to work business through this gateway is extremely doubtful. The number of passengers who actually take this route is not materially less than it would be if a through route was established. Some few travelers are doubtless deterred by the difficulties of passing through Portland from taking this line, but the testimony fairly shows that this number is insignificant. The present arrangement imposes a great hardship upon the traveling public and results in practically no benefit to the Northern Pacific. If the Northern Pacific has the right to close this gateway, it should be closed, and the public should understand it; if it has not that right, then the gateway should be opened. The present situation produces much irritation, and is of no substantial benefit to the Northern Pacific.

It should also be noted that under the present arrangement, while the passenger receives his train fare from Portland to destination, he is obliged to pay the additional Pullman fare, whereas it was stated upon the hearing that the Pullman Company would sell, if there were a through route, a ticket to Tacoma for the coast price, which would entitle the passenger to space between Portland and Tacoma.

At the present time the passenger at Chicago may travel on a through ticket via St. Paul and the Canadian Pacific lines to Tacoma, in which event the Canadian Pacific carries the passenger to Sumas and the Northern Pacific from Sumas to Tacoma, a distance of about 160 miles. That passenger may also go via St. Paul and the Great Northern, the Northern Pacific securing the transportation from Seattle to Tacoma, a distance of 11 miles.

We feel that the passenger should also have the right to journey upon a through ticket via Portland, in which event the Northern Pacific would obtain a haul of 140 miles.

The right of a railroad to control its traffic by the making of arrangements for through routes and joint rates for the handling of both passenger and freight business is a thing of value to the railway, which should be protected in so far as it can be without infringing upon the right of the public; but these railroads are public servants and it is their first duty to accord to the public proper facilities.

We are in receipt of numerous letters, of petitions from various communities, from boards of trade and other commercial organizations, asking that this gateway be opened. The railroad commission of Oregon has joined its request, all of which indicates that there is a public demand for this route.

This commission has held that, with respect to freight business, the Northern Pacific and the Great Northern may absolutely control all territory east of and including Colorado common points. It is no hardship to say that, with respect to passenger business, the Northern Pacific must open its lines to this transcontinental travel.

We are of the opinion that the through rates via Portland



should be the same as those in effect via the Northern Pacific and its present connections. No opinion is expressed touching the division of these rates. The public interest requires that this gateway shall be opened; but the terms under which that service is rendered should be just as between the carriers themselves. The local fare upon the line of the Northern Pacific is not of necessity the measure of its division. If the carriers do not agree application can be made to the Commission, which must then hear the parties and decide the question.

KNAPP, Chairman, dissenting:

The majority report summarizes concisely the law in respect of the establishment of through routes and joint rates in the following language:

"The statute provides that the commission may establish through routes and joint rates, but does not require it to do so."

It follows, then, that before the commission can lawfully exercise its discretion in this respect, it must find that no reasonable or satisfactory through route exists; and when its jurisdiction is thus established, its discretion must be exercised upon sound considerations of justice to the public and the carriers. In this proceeding I conceive that both the jurisdictional facts and the equitable considerations essential to the lawful and proper exercise of the commission's authority are altogether lacking.

It appears from the record and is conceded by the majority that from all Missouri River points and territory east thereof the route already established offers to the public as reasonable fares and as comfortable accommodations as would be afforded by the proposed Portland route, and that in distance and time it is somewhat shorter. This being so, the existing route must, in my opinion, be held both reasonable and satisfactory within the meaning of the statute. Certainly the route shortest in time and distance, and equal to any other in the comforts provided for the traveler, can not be called an unreasonable route; and I assume, without arguing the point, that the term "satisfactory" as used in the statute is practically synonymous with "reasonable." Moreover, it seems to me that the majority err in taking into account, to the extent indicated, the incidental desire of the passenger to stop at intermediate points or to travel by a variety of routes. In my judgment, all that can be asked by a person seeking transportation from, say, Chicago to Tacoma is expeditious and comfortable passage between those two points. If he desires stop-over privileges or to visit cities which are not upon the reasonable route already established, he is asking an additional service or  
 58 privilege for which extra compensation may properly be exacted. The absence of opportunities of this sort, or the lack of attractive scenery, does not make the quickest and otherwise satisfactory route an unreasonable one to be condemned as inadequate by the commission.



Much stress appears to be laid upon the inconvenience to passengers over the Union Pacific route of rechecking baggage and exchanging tickets at Portland. Even conceding that this is germane to the issue, it seems to me to arise largely because the Union Pacific, in order to secure the long haul to Portland, advertises a through route to Puget Sound which does not in fact exist. Under the present practice of the Union Pacific, the legality of which is not now considered, the passenger to Puget Sound pays no extra fare in order to gratify his desire to travel by that route, and it would seem that the trouble of rechecking baggage and exchanging tickets at Portland is fully compensated by the business convenience of stop-over privileges and other advantages of an incidental or personal nature.

But assuming, though not conceding, that the jurisdictional basis for an order exists, there are controlling reasons, as I think, for declining to take such action. The expensive terminals of the Northern Pacific at Tacoma and Seattle were not provided for local business from Portland, and apparently could not be afforded for that local travel. Those terminals are supported by traffic over the whole system. The order of the commission in this case in effect places the Union Pacific in substantially the same position as it would be if it had built its own railroad from Portland to Tacoma, some 140 miles. Except in so far as the regulating statute may prevent, carriers are at liberty to take such measures as may be proper to secure and retain traffic upon their own lines. I can not agree to a ruling in this matter which would go far to commit us to the proposition that a company might now build a railroad from, say, Trenton, N. J., to Crown Point, Ind., and successfully demand that the Pennsylvania system be required to join it in through routes east or west between New York and Chicago. Suppose the Northern Pacific ended at Tacoma and the Oregon Railroad and Navigation extended from Portland to Tacoma. Would it be just to require the Northern Pacific to unite with the Oregon Railroad and Navigation in joint rates to Seattle? In the absence of a real public necessity it seems plainly inequitable, by compelling connections and through routing, to take from a carrier traffic for the accommodation of which it has expended millions of dollars and practically turn over that traffic with the use of the carrier's terminals to a competitor which does not see fit to provide for itself the needful railway and terminals.

With reference to the exercise of discretion, it is of course true that the conclusions of the majority in this case will not be controlling in other proceedings, as each case must be judged in the light of its special conditions and circumstances. Nevertheless, the fact that the order made herein, if followed in cases of a similar character, will reverse the common practice of carriers of reserving to themselves the long haul where they can furnish satisfactory accommodations—a practice justified by the business welfare of the carrier, and nowise at variance with its public duty—suggests to my mind that the commission should not compel through routes and joint rates except upon a disclosure of real and substantial public

inconvenience and hardship which could not be otherwise avoided. In my judgment no such disclosure has been made in this case.

I am authorized to say that Commissioner Clark unites in this dissent.

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*Order.*

At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 4th day of May, A. D. 1909.

Present: Martin A. Knapp, Judson C. Clements, Charles A. Prouty, Francis M. Cockrell, Franklin K. Lane, Edgar E. Clark, James S. Harlan, Commissioners.

No. 1544.

In the matter of through passenger routes via Portland, Oreg.

This case being at issue upon complaint and answers on file, and the matters involved having been fully heard and submitted, and it appearing that the carriers named in paragraph 2 of this order have neglected and refused to voluntarily establish through routes and joint rates for the transportation of passengers and the baggage of such passengers over their lines of railway from Chicago, Ill., and other points on the Chicago & North Western Railway between Chicago, Ill., and Council Bluffs, Iowa, including the latter point, and from points on the Union Pacific Railroad between Colorado common points, so called, on the west, and Omaha, Nebr., and Kansas City, Mo., on the east, including the latter two points, via Portland, Oreg., to points on the Northern Pacific Railway, in the state of Washington, between Portland, Oreg., and Seattle, Wash., including the latter point, and in the opposite direction from said points on the Northern Pacific Railway, via Portland, Oreg., to said points on the Union Pacific Railroad and on the Chicago & North Western Railway; and it further appearing that no reasonable or satisfactory through route for such transportation exists between any of said eastern points on the one hand and any of said western points on the other hand:

It is ordered, That the Chicago & North Western Railway Company, the Union Pacific Railroad Company, the Oregon Short Line Railroad Company, the Oregon Railroad & Navigation Company and the Northern Pacific Railway Company, be, and they are hereby, notified and required to establish on or before July 1, 1909, and maintain in force thereafter, during a period of not less than two years, through routes and joint rates applicable thereto, for the transportation of passengers and the baggage of such passengers, from Chicago, Ill., and other points on the Chicago & North Western Railway between Chicago and Council Bluffs, Iowa, including the latter point, and from points on the Union Pacific Railroad between Colorado common points, so called, on the west and Omaha, Nebr., and Kansas City, Mo., on the east, including the latter two points, via Portland, Oreg., to points in the state of Washington, on the North-

ern Pacific Railway between said Portland and Seattle, Wash., including the latter point; said joint rates to be the same as the joint rates contemporaneously in effect between said points via the Northern Pacific Railway and its present connections.

It is further ordered, That the carriers named in paragraph 2 of this order be, and they are hereby, notified and required to establish on or before said July 1, and maintain in force thereafter during a period of not less than two years, through routes and joint rates applicable thereto, for the transportation of passengers and the baggage of such passengers, from said points on the Northern Pacific Railway, via Portland, Oreg., to said points on the Union Pacific Railroad and to said points on the Chicago & North Western Railway, including Omaha, Nebr., Kansas City, Mo., and Chicago, Ill.; said joint rates to be the same as the joint rates contemporaneously in effect between said points via the Northern Pacific Railway and its present connections.

And it is further ordered, That said carriers be, and they are hereby, authorized to make effective upon three days' notice to the public and to the Interstate Commerce Commission, given in the manner required by law, the through routes and joint rates said carriers are by this order required to establish and maintain in force, but the tariffs must contain a reference to the number of this case and show that they are issued under the authority hereby granted.

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*Stenographer's minutes.*

Before the Interstate Commerce Commission.

Docket No. 1544.

In the matter of Through Passenger Routes via Portland, Oregon.  
At Chicago, Illinois.

Date, February 17, 1909.

(Endorsed:) Filed May 25th, 1909. Henry D. Lang, clerk.

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Before the Interstate Commerce Commission.

In the matter of Through Passenger Routes via Portland, Oregon.  
No. 1544.

Before Commissioner Charles A. Prouty.

FEDERAL BUILDING, CHICAGO, ILLINOIS.

Wednesday, February 17, 1909.

The commission met at ten o'clock a. m.

Present: Commissioner Prouty.

Appearances: For the Interstate Commerce Commission, Mr. A. H. Lossow; for the Northern Pacific Railway Company, Mr. Charles W. Bunn, No. 211 Northern Pacific building, St. Paul, Minnesota;  
for the Union Pacific Railroad Company, Mr. N. H. Loomis;

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for the Oregon Short Line Railroad Company, Mr. P. L. Williams; for the Oregon Railroad & Navigation Company, Mr. W. W. Cotton; for the Union Pacific lines, Mr. F. C. Dillard, No. 135 Adams st., Chicago, Illinois; for the Chicago & Northwestern Railway Company, Mr. S. A. Lynde, 215 Jackson boulevard, Chicago, Illinois.

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186 Commissioner PROTBY. We will proceed now, gentlemen, with docket No. 1544, in the Matter of Through Passenger Routes via Portland, Oregon. In this case Mr. Lossow will represent the commission, this being a proceeding begun by the commission of its own instance. Who appears for the Northern Pacific and the Great Northern?

Mr. BUXX. I appear for the Northern Pacific. I think, Mr. Commissioner, the Great Northern was not made a party.

Commissioner PROTBY. I think you are correct Mr. Bunn, the Great Northern was not made a party. The proceeding was against the Northern Pacific Line. Who appears for the Union Pacific?

Mr. DILLARD. Please note Mr. N. H. Loomis for the Union Pacific, the Mr. P. L. Williams for the Oregon Short Line, Mr. W. W. Cotton, for the Oregon Railroad & Navigation Company, and Mr. F. C. Dillard with them representing all of the companies.

Commissioner PROTBY. Is there any appearance here for the Chicago & Northwestern Railway Company?

Mr. DILLARD. I was advised yesterday, if your honor please, that there would be an appearance. Mr. Lynde has not come in yet.

He told me he would be here; however, he may have delayed, in the thought that these other cases would take a little longer than they have done. I asked a gentleman to 'phone  
187 a moment ago that we were now entering upon this case.

Commissioner PROTBY. Mr. Bunn, I believe I wrote your company, asking that some traffic man who was familiar with this situation be produced here.

Mr. BUXX. We have one.

Commissioner PROTBY. You have one, have you?

Mr. BUXX. Yes, sir.

Commissioner PROTBY. He may take the stand, if you please. Mr. Bunn and Mr. Dillard, I think Mr. Lossow perhaps might go ahead with this witness and ask what questions he desires, and then we will allow you and Mr. Bunn to ask any additional questions.

Mr. BUXX. Just as you desire. I think, perhaps, if I examine Mr. Woodworth first, knowing what he would say, that I would save time.

Commissioner PROTBY. That would perhaps be so.

Mr. BUXX. And I probably would cover what Mr. Lossow desires.

Commissioner PROTBY. Mr. Lossow, perhaps we will allow Mr.

188 Bunn to go ahead and examine Mr. Woodworth, and then you can examine and bring out any point which he does not develop to your satisfaction.

J. G. WOODWORTH, called as a witness herein, having been first duly sworn, testified as follows:

Direct examination:

Mr. BUNN. Mr. Woodworth, you are general traffic manager of the Northern Pacific?

Mr. WOODWORTH. Yes, sir.

Mr. BUNN. Have you with you a map which shows this situation?

Mr. WOODWORTH. Yes, sir.

Mr. BUNN. I do not know, Mr. Commissioner, whether you desire that map offered in evidence.

Commissioner PROTBY. It might perhaps be well enough to identify that map, so we can have that one or one like it.

Mr. BUNN. You are familiar in point of fact with the country represented on that map, and with the railroads in it—  
189 that is, particularly the Union Pacific Line and the Burlington and Northern Pacific and Great Northern lines?

Mr. WOODWORTH. Yes, sir.

Mr. BUNN. Is it a fair map, showing the location of the roads and the geography?

Mr. WOODWORTH. I think it is, and I used it because it shows plainly all of the connecting lines of each of the transcontinental systems.

Mr. BUNN. I think the commission and everybody else knows by looking at that map which railroad is which, and we need not spend any time on that. Mr. Woodworth, have you caused to be tabulated the statement showing the service via the Burlington and the Northern Pacific compared with the service via the Union Pacific lines, between various points in the Middle West and Puget Sound?

Mr. WOODWORTH. I have such a statement covering westbound service.

Mr. BUNN. Will you kindly produce it and give me a copy for Mr. Dillard? Mr. Commissioner, I do not know whether you think it is desirable to have these matters stated to you at this time, or simply to introduce the tabulation in evidence.

Commissioner PROTBY. I think it might be well for Mr.  
190 Woodworth, who has a very comprehensive knowledge of the situation, to state in a general way his deduction from that detailed statement.

Mr. BUNN. Well, you take this statement, Mr. Woodworth, and tell the commission what your statement shows. I will ask this question to bring you right to the point: Taking the country between Chicago and the Missouri River, both in Iowa, Illinois, Kansas, Wisconsin, what kind of a route do the Burlington and Northern Pacific furnish that country to Puget Sound, compared with routes in the

same country to Puget Sound via the Union Pacific lines and Portland?

Mr. WOODWORTH. We think this statement will show that they furnish an adequate service and a superior route between Seattle and all of the territory you have described.

Mr. BUNN. Does that comprise the whole of Kansas?

Mr. WOODWORTH. There might be some local points in Kansas, western Kansas, which could be reached in a slightly shorter time.

Mr. BUNN. What points in Kansas are included in your statement there?

Mr. WOODWORTH. I have shown Kansas City, Topeka, Ellsworth, Kansas. I believe, is in there. Those are the only  
191 Kansas points.

Mr. BUNN. Will you show the commissioner where Ellsworth, Kansas, is?

Mr. WOODWORTH. Ellsworth, Kansas, is.

Mr. WOODWORTH. Ellsworth, Kansas, is at this point. [Indicating on map.]

Commissioner PROUTY. On what line of road?

Mr. WOODWORTH. On the Union Pacific. I selected that as a point which would represent their advantage if they had any, and I see by referring to the statement that even from Ellsworth it would be possible to make a little better time to Seattle via Billings than it would be possible via Denver.

Commissioner PROUTY. What would be the route from Ellsworth?

Mr. WOODWORTH. The shortest time from Ellsworth would be made from Kansas City.

Commissioner PROUTY. You would go via the Union Pacific into Kansas City, and from Kansas City via the Burlington?

Mr. WOODWORTH. Yes, sir.

Mr. BUNN. Do you have the time there from Ellsworth to Denver and then via the other roads?

Mr. WOODWORTH. I have the time from Ellsworth. Do you  
192 mean via the Burlington from Denver? I have the time via the Union Pacific from Ellsworth to Portland.

Mr. BUNN. Through Denver?

Mr. WOODWORTH. Through Denver.

Mr. BUNN. Now, Mr. Woodworth, I read from your statement the following points: St. Louis, Chicago, Milwaukee; Davenport, Iowa; Springfield, Illinois; Topeka, Kansas; Sioux City, Iowa; Peoria, Illinois; Quincy, Illinois; Omaha, Nebraska; Kansas City, Missouri; North Platte, Nebraska.

Mr. WOODWORTH. St. Joseph and St. Paul.

Mr. BUNN. Yes; St. Joseph, Missouri; North Platte, Nebraska; Ellsworth, Kansas; Fort Worth, Texas; Denver, Colorado; Cedar Rapids, Iowa; Clinton, Iowa; Marshalltown, Iowa; Des Moines, Iowa. I don't see St. Paul here.

Mr. WOODWORTH. It is there.

Mr. BUNN. St. Paul, Minnesota: correct. And your statement that from all those points the route via the Burlington and Northern Pacific is as good or better than the route via the Union Pacific, in point of time and service?

Mr. WOODWORTH. North Platte, Nebraska, would be an exception to that statement.

Mr. BUNN. Is there any other?

193 Mr. WOODWORTH. I think that is the only one; that is the only exception of the points named in this statement.

Mr. BUNN. That point is on the Union Pacific line between Omaha and Cheyenne?

Mr. WOODWORTH. Yes.

Mr. BUNN. Why did you select it?

Mr. WOODWORTH. It was selected for the same reason as the others were, as a point local to the Union Pacific and one from which they would naturally have the greatest advantage.

Commissioner PROUTY. Now, take Ellsworth, which seems to be a local point on the Union Pacific, and which, I suppose, is typical of a good many points west of the Missouri River; you say in going from Ellsworth to Seattle the most direct way would be to return to Kansas City, and at Kansas City to take the Burlington road. Is there in effect any through rate from Ellsworth to Seattle via the Burlington route, or would the passenger be compelled to pay his local fare from Ellsworth back to Kansas City and there take the Burlington?

Mr. WOODWORTH. I will have to ask Mr. Cleland if there is a through rate in effect via Kansas City from Ellsworth?

Mr. CLELAND. I couldn't say.

Mr. DILLARD. I think you will find that he pays his local fare.

194 Mr. WOODWORTH. In suggesting that Ellsworth be shown in this statement, I suspected they would compare the time via Denver. I did not know until I saw it here that the time via Kansas City would be shorter than via Denver. I really intended to show a comparison of the service through Denver in connection with the Union Pacific, and in connection with the Burlington.

Commissioner PROUTY. Now, suppose the passenger were to go from Ellsworth to Denver, what would the fare be via Denver? He would pay a local fare, I suppose, to Denver, and from Denver he would pay the Denver rate to Seattle, whatever that might be.

Mr. WOODWORTH. There are through rates in effect from Ellsworth via Denver in connection with the Burlington, or should be; that is, there are so far as we are concerned, and I think they are in effect.

Mr. CLELAND. Yes.

Mr. WOODWORTH. Mr. Cleland says they are.

Commissioner PROUTY. You say that there is a through rate from Ellsworth to Seattle via Denver?

Mr. WOODWORTH. In connection with the Burlington.

195 Commissioner PROUTY. In connection with the Burlington?

Mr. WOODWORTH. Yes.



Commissioner PROUTY. That is to say, the passenger would go to Denver, and at Denver he would take the Burlington to Billings, and at Billings he would take your line to Seattle.

Mr. WOODWORTH. Yes. This statement should have shown the comparison of the service through Denver.

Mr. BUNN. Take Denver as the point, how does your route between Denver and Seattle compare with the Union Pacific route?

Commissioner PROUTY. Just a minute, Mr. Bunn. It seems to me as I look at this thing that we should get about all there is of it if we should take Denver as a typical Colorado common point perhaps; if we were to take Omaha or Kansas City as typical Missouri River points, and if we were to take Chicago as a typical Mississippi River point.

Mr. BUNN. I quite agree with you.

Commissioner PROUTY. I take it that almost all traffic originating east of Chicago would move either through Chicago or through Kansas City in going west.

Mr. BUNN. Yes.

196 Commissioner PROUTY. Of course there are a great many local points.

Mr. BUNN. If your honor will notice these points, they have been taken with exactly that idea, that they were typical basing points.

Commissioner PROUTY. There must be a good many local points between the rivers perhaps, and there are local points between the Missouri River and Colorado common points, which might be considered by themselves, points like Ellsworth, but the great mass of traffic would be represented by taking those points, taking Denver, Kansas City, and Chicago.

Mr. BUNN. Does your statement show Denver?

Mr. WOODWORTH. Yes, sir.

Mr. BUNN. Tell the commissioner what the comparisons of routes is from Denver as an initial point.

Mr. WOODWORTH. The time from Denver to Seattle via the Burlington road through Billings is 61 hours and 15 minutes. The time from Denver to Seattle via the Union Pacific through Portland is 60 hours and 15 minutes; one hour shorter.

Commissioner PROUTY. What is the time from Denver to Portland? How many hours?

197 Mr. WOODWORTH. Fifty hours. You will remember that we have authorized through tickets via Portland from Denver.

Commissioner PROUTY. I did not know that.

Mr. BUNN. Runs as far east as Denver and Cheyenne.

Mr. WOODWORTH. Although there was only one hour difference in the service.

Mr. BUNN. Now, from Denver, how does the car service compare?

Mr. WOODWORTH. I think it may be fairly said that it is better via Billings because of—

Mr. BUNN. Well, what is the service?

Mr. WOODWORTH. A first-class passenger leaving Denver on the Burlington takes a sleeper from which he changes en route to the through Seattle sleeper.

Mr. BUNN. Changes on the train?

Mr. WOODWORTH. On the train. He has only one change, and that is on the train.

Mr. BUNN. He doesn't change trains?

Mr. WOODWORTH. No. On the Union Pacific he takes the Salt Lake sleeper and changes on the train to the Portland sleeper, and then makes a change of cars and train at Portland with a lay over of 2 hours and 55 minutes.

198 Mr. BUNN. Take Clinton, which is where the Chicago & Northwestern main line crosses the Mississippi River, and Davenport, which is where the Rock Island main line crosses the Mississippi River, and tell the commissioner how the service by each route compares.

Mr. WOODWORTH. From Clinton, Iowa, to Seattle via Omaha and Billings the time consumed is 79 hours and 15 minutes; and via the Union Pacific through Omaha and Portland it is 83 hours and 20 minutes.

Commissioner PROUTY. What is the time from Clinton?

Mr. WOODWORTH. Seventy-two hours and thirty-three minutes.

Mr. BUNN. The commissioner meant, as I understand, from Clinton to Omaha.

Commissioner PROUTY. I should have said, What is the time from Clinton to Portland?

Mr. WOODWORTH. Seventy-two hours and thirty-three minutes, which includes thirty-two minutes dead time at Omaha.

Commissioner PROUTY. What time do you reckon from Clinton to Omaha?

Mr. WOODWORTH. Ten hours and thirty-eight minutes.

Mr. LYNDE. That time he gave from Clinton to Portland is via the Northwestern to Omaha, as I understand it.

199 Mr. WOODWORTH. Yes.

Mr. BUNN. How does the service compare?

Mr. DILLARD. What time did he give via the Burlington?

Mr. WOODWORTH. Seventy-nine hours and fifteen minutes.

Mr. DILLARD. Seventy-two via the Northwestern and U. P.

Mr. WOODWORTH. Eighty-three hours and twenty minutes.

Mr. LYNDE. Seventy-three hours to Portland.

Mr. WOODWORTH. I said 73 to Portland.

Mr. DILLARD. I asked over the two routes to Portland.

Commissioner PROUTY. He shows on his table there, does he not, the time to Omaha, the time from Omaha to Portland, and the time from Portland to Seattle?

Mr. BUNN. Yes.

Commissioner PROUTY. And I asked him to give it from Iowa.

Mr. BUNN. What Mr. Dillard was asking would involve our time from Seattle down to Portland.

Commissioner PROUTY. Yes.

Mr. DILLARD. I thought he had given it.

Mr. WOODWORTH. Not in here; no.

Commissioner PROUTY. In that computation what wait do you reckon at Portland?

200 Mr. WOODWORTH. It depends on which of the Union Pacific trains we use, which makes the best eastern connection.

Commissioner PROUTY. How many trains do you operate from Portland to Seattle a day?

Mr. WOODWORTH. There are three in each direction now, and in the summer season four.

Mr. CLELAND. Four?

Mr. BUNN. Four now?

Mr. CLELAND. Four now.

Commissioner PROUTY. At what hour do those trains leave Portland?

Mr. WOODWORTH. I think it is 8.30 a. m., 2.00 o'clock p. m., 11.30 p. m. When does the fourth one leave? There are only three running now. I think I was correct in the first place.

Mr. CLELAND. Only three; yes, that is right.

Commissioner PROUTY. In the summer, however, you say you have another train. When does that leave?

Mr. WOODWORTH. Four thirty p. m.

Commissioner PROUTY. And the running time is about how long between Portland and Seattle?

Mr. WOODWORTH. Seven hours and twenty minutes.

201 Commissioner PROUTY. What is the distance?

Mr. WOODWORTH. One hundred and eighty-six miles.

Commissioner PROUTY. Are any of those trains express trains, or do they make all stops?

Mr. WOODWORTH. The one leaving at two p. m. might be called an express train, although it makes the principal stops; and the same is true in the summer time of the train at four thirty p. m. And the night train makes only the principal stops. The morning train makes all of the stops.

Commissioner PROUTY. Proceed, Mr. Bunn.

Mr. BUNN. How does the service compare, taking Omaha as starting point?

Mr. WOODWORTH. One train from Omaha to Seattle via Billings makes the time in 66 hours and 20 minutes.

Mr. BUNN. One Burlington train, or one Union Pacific train?

Mr. WOODWORTH. That is the Burlington via Billings and the Northern Pacific. I think their time is 71 hours and 15 minutes. The one last mentioned is not a through train; it is a change of cars at Billings. Via the Union Pacific the shortest time is 72 hours and 10 minutes through Portland.

202 Commissioner PROUTY. The time from Omaha to Portland seems to be a base figure in this petition; what is that time?

Mr. WOODWORTH. The time from Omaha to Portland via the Union Pacific is 61 hours and 55 minutes.

Mr. BUNN. That is one of their fastest trains?

Mr. WOODWORTH. Yes.

Mr. BUNN. What is the distance from Omaha to Seattle via each route?

Mr. WOODWORTH. Via Billings and the Northern Pacific, 1,915 miles; and via the Union Pacific through Portland, 1,985 miles.

Mr. DILLARD. Excuse me, I did not quite catch the question. You did not mean to say that the distance from Omaha to Portland via the Union Pacific is 1,985 miles?

Commissioner PROUTY. To Seattle.

Mr. DILLARD. To Seattle; I thought you asked as to Portland. Excuse me, it is my fault.

Mr. BUNN. Tell us how the service from Kansas City to Seattle compares via each route.

Mr. WOODWORTH. Via the Burlington through Billings it is 72 hours, and via Portland and the Union Pacific it is 87 203 hours and 5 minutes.

Mr. BUNN. How about the train service?

Mr. WOODWORTH. The train service via Billings is better, because there is a solid train running from Kansas City to Seattle via Billings, whereas passengers from Kansas City via the Union Pacific must change cars at Portland and must also change cars somewhere en route between Kansas City and Portland. That is true as to first-class passengers. They may run a tourist sleeper from Kansas City to Portland.

Mr. BUNN. That is, the Union Pacific may?

Mr. WOODWORTH. Yes.

Mr. DILLARD. That is a fact.

Commissioner PROUTY. You operate a tourist sleeper from Kansas City to Seattle?

Mr. WOODWORTH. From St. Louis to Seattle through Kansas City.

Mr. BUNN. That is what I want to ask next. Tell the commissioner what the Burlington train service is from the southwest via Billings from Missouri River points.

Mr. WOODWORTH. Kansas City is the base of the Burlington through-train service in connection with the Northern Pacific through Billings, and it is a solid through train.

204 Mr. BUNN. To Seattle?

Mr. WOODWORTH. To Seattle, carrying standard sleeper, tourist sleeper, and chair car. The tourist sleeper line terminates at St. Louis.

Mr. BUNN. Let me see if I understand you. There is a first-class sleeper from Kansas City to Seattle, a tourist sleeper from St. Louis to Seattle via Kansas City?

Mr. WOODWORTH. Yes.

Mr. BUNN. And a chair car from Kansas City?

Mr. WOODWORTH. Yes.

Commissioner PROUTY. What hour does that train leave St. Louis and what hour does it arrive at Kansas City?

Mr. WOODWORTH. The through tourist sleeper leaves Kansas City via the Burlington at 9.01 p. m.

Mr. CLELAND. Leaves St. Louis?

Mr. WOODWORTH. Leaves St. Louis. I should say at 9.01 p. m.; a passenger can leave on the Wabash train at 11.31 p. m. and connect with the same train from Kansas City.

Mr. CLELAND. Also on the Burlington?

Mr. WOODWORTH. Yes, sir; your train leaves a few minutes earlier. They have shown the one that makes the shortest time here.

205 Mr. CLELAND. The Burlington midnight train is 11.28.

Mr. WOODWORTH. I have stated here approximately the same time is made by using the Missouri Pacific, Burlington or Alton Road, St. Louis to Kansas City.

Mr. BUNN. You have stated in this memorandum the car service and the time of departure of each train from each point, haven't you?

Mr. WOODWORTH. Yes, sir.

Mr. BUNN. That, then, will appear without my going over it. Now, if you will tell us what the time and service from Chicago to Seattle is.

Mr. WOODWORTH. Do you want a statement as to the service via the Union Pacific from Kansas City?

Mr. BUNN. From Kansas City, yes; you may state that before answering the other question.

Mr. WOODWORTH. The Union Pacific operate a through tourist sleeper from Kansas City to Portland, first-class sleeping car passenger, use a Denver sleeper from Kansas City, then are taken in the Salt Lake sleeper from Denver, from which they transfer en route to the Portland sleeper at some point between Cheyenne and Green River.

Mr. BUNN. Now, tell us the wherefore of the car service  
206 between Chicago and Seattle; why there are three different routes.

Mr. WOODWORTH. The shortest distance and the best service, from Chicago to Seattle is via St. Paul. A man leaves here at 6.30 o'clock p. m. on any one—I guess all five roads have a 6.30 p. m. train—any one of five roads connecting at St. Paul with our train leaving there at 10.15 a. m., which would make the through time from Chicago to Seattle 77 hours. You can leave at 10.00 p. m. on the Chicago & Northwestern and make the same connection at St. Paul with through time 73 hours and 30 minutes. From Chicago to Seattle via the Union Pacific through Portland, the shortest possible time is 87 hours and 5 minutes. The comparison of distance is 2,312 via St. Paul, and 2,478 miles via Portland.

Mr. BUNN. Mr. Woodworth, is there any Missouri River or Mississippi River point where the Union Pacific via Portland would furnish a better line to Puget Sound either in time or service than the Northern Pacific and Burlington?

Mr. Woodworth. No, sir; and as to Chicago, if a man wanted to go through Omaha he could make better time by using the Burlington from Omaha. That is, he can go from Chicago to  
207 Seattle via Omaha and the Burlington in 83 hours and 30 minutes as against 87 hours and 5 minutes, the shortest possible time via Portland.

Mr. BUNN. Let us be clear about your answer to the next question. Therefore, do you find any point on the Mississippi River, or on the Missouri River, where the Union Pacific lines through Portland furnish a better route either in time or service than the Burlington and Northern Pacific to passengers going to Puget Sound?

Mr. Woodworth. No, sir. In every case there is a very considerable difference in favor of the Northern Pacific.

Mr. BUNN. The Burlington has two trains from Kansas and Nebraska up to Billings each day, doesn't it?

Mr. Woodworth. Yes, sir.

Mr. BUNN. I think you spoke only of one of them. What is the other?

Mr. Woodworth. The train which carries the through equipment, the solid through train, leaves Kansas City at 10.30 a. m. The second train leaves at 6.05 p. m. That train does not run farther than Billings, but makes a natural connection.

Mr. BUNN. What equipment does that train carry, sleeping  
208 car?

Mr. Woodworth. The same as the other, all classes, all kinds of cars.

Mr. BUNN. All kinds of sleeping cars, chair car, and so forth?

Mr. Woodworth. Yes, and connects with our train No. 1 at Billings.

Mr. BUNN. That is our so-called limited train from St. Paul to Seattle?

Mr. Woodworth. Yes, sir.

(Which said document last above referred to was marked "Northern Pacific Exhibit 1," and is hereto attached and made a part hereof.)

Mr. BUNN. You showed me another memorandum, Mr. Woodworth, which I wish you would hand to me. What have you to say about the eastbound service between Seattle and Omaha, Chicago, and Kansas City?

Mr. Woodworth. We made no similar statement of the eastbound service, but the difference in service is substantially the same; if anything our advantage is greater in connection with the eastbound business.

Mr. BUNN. And the statement could be made up exactly  
209 like this from the official railway guide?

Mr. Woodworth. Yes, sir.

Mr. BUNN. Will you tell us what changes in this service are in immediate contemplation to take effect in May?

Mr. WOODWORTH. Our passenger business will be handled under a new schedule beginning May 23rd. We will add another through train between St. Paul and Seattle, and the run of our principal trains will be extended to Chicago over the Burlington road.

Commissioner PROUTY. What do you mean by "extended to Chicago," that you will operate a through train from Chicago via Minneapolis?

Mr. WOODWORTH. Yes, sir. The time of our fastest train from St. Paul to Seattle will be reduced one hour and forty-five minutes; and the running time of our train No. 2, which is our principal eastbound train, will be reduced to the extent of three hours and forty minutes from Seattle to St. Paul. This through service in connection with the Burlington—

Mr. BENX. When you say "through," you mean through to Chicago.

Mr. WOODWORTH. Through to Chicago will give a 72-hour schedule in both directions.

Mr. BENX. Compared with what; how much does it cut down the time?

Mr. WOODWORTH. The shortest time now?

Mr. BENX. Your memorandum says eight hours.

Mr. WOODWORTH. Yes, it will be eight hours, because there is now a lay over from 2:20 p. m. until 6:30 p. m. at St. Paul.

Mr. BENX. You say in your memorandum here it will be cut from 80 hours to 72 hours.

Mr. WOODWORTH. That is correct; 80 hours is now the shortest time.

Mr. BENX. What changes will become effective at the same time, if any, via the Billings route?

Mr. WOODWORTH. There will be no material change in our through service via Billings in connection with the Burlington, where we already have a through train; but there will be added a similar through train between Kansas City and Seattle in connection with the Great Northern, and the Great Northern will also

Mr. BENX. Let us stop on this train now and understand that.

Mr. WOODWORTH. Yes.

Mr. BENX. That is, commencing the 23rd of May there will be a Burlington through train up to Billings and over the Great Northern?

Mr. WOODWORTH. Yes, sir.

Mr. BENX. And the same service that you have described over the Northern Pacific will remain substantially as at present?

Mr. WOODWORTH. Yes, sir.

Mr. BENX. I infer from that, and you might as well state it, that the Great Northern has lately built a line from Billings to Great Falls.

Mr. WOODWORTH. Yes, sir.

Mr. BENX. Which permits of that service?

Mr. WOODWORTH. Yes.

Commissioner PROUTY. What is the distance, Mr. Woodworth?

Mr. WOODWORTH. I think, perhaps, there is some one here that knows it exactly. I don't know it exactly.

Mr. BUNN. The Great Northern distance to Seattle is not as short as ours?

Mr. WOODWORTH. No; it would be longer.

Commissioner PROUTY. I was wondering what the official distance was from Billings to Great Falls.

Mr. WOODWORTH. It is 240 miles from Billings to Great Falls. That factor will enable anyone to figure the through distance.

Mr. BUNN. On the 23rd of May, will there be any additional service via St. Paul that you have not spoken of?

Mr. WOODWORTH. The Great Northern, like ourselves, will extend one of their trains through to Chicago over the Burlington, and it will then be possible for a man to get a through train from Chicago to Seattle, over one road or the other, either in the morning or in the evening.

Commissioner PROUTY. That is to say, one of those trains will arrive in Chicago in the morning and the other will arrive in the evening?

Mr. WOODWORTH. Yes.

Commissioner PROUTY. And one will leave in the morning and one will leave in the evening?

Mr. WOODWORTH. Yes.

Mr. BUNN. These changes via Billings will give two daily through trains in each direction between Seattle and Kansas City, St. Joseph, and Lincoln, with through sleeping cars on each train?

213 Mr. WOODWORTH. Yes, sir.

Mr. EUSTIS. And Omaha?

Mr. WOODWORTH. Yes, sir.

Commissioner PROUTY. Now, do you put those trains on permanently, or only during the exposition?

Mr. WOODWORTH. We expect them to be permanent. They have been planned for some time past.

Mr. BUNN. The Northern Pacific has three trains permanent between St. Paul and the coast now, I believe?

Mr. WOODWORTH. Yes. Only two of them are express trains. Under the new schedule there will be three express trains in each direction.

Mr. BUNN. What change in service will take place immediately by reason of the opening of the line down the north bank of the Columbia, connecting Spokane with Portland?

Mr. WOODWORTH. The North Bank road is now almost completed to Spokane. We have through service in connection with the North Bank road between Spokane and Portland, via Pasco, but have not arranged any through car or train service for eastern business. That arrangement will be made immediately the North Bank road is completed to Spokane, which will be not later than April 1st; and

214 in connection with this new schedule we will have a through



train, or through car service, over our line to Portland in connection with the North Bank road through Spokane.

Mr. BUNN. Will you sell tickets so that a man can go to Seattle by one route and come back via the other—that is, go to Seattle via the present Great Northern route, for example, or Great Northern, and come back via the Columbia River.

Mr. WOODWORTH. Yes; we will give Seattle passengers the option of using the direct line or traveling via Portland and the North Bank road?

Mr. BUNN. I think you stated that you did make a joint route through tickets with the Union Pacific via Portland to Puget Sound as far east as Denver and Cheyenne?

Mr. WOODWORTH. Yes, sir.

Commissioner PROUTY. Does that apply to all Colorado common points?

Mr. WOODWORTH. Yes, sir.

Mr. BUNN. For any west of those points?

Mr. WOODWORTH. Yes, sir.

Mr. BUNN. East of that you evidently declined to do so because you thought your service was just as good as theirs?

215 Mr. WOODWORTH. Yes, sir.

Mr. BUNN. How is it about round-trip tickets?

Mr. WOODWORTH. Round-trip tickets are good going by one route and returning by the other at the option of the passenger without any addition to the rate. For illustration, a man can go to Portland over the Northern Pacific and return via the Union Pacific, or he can return via the Northern Pacific as he pleases.

Mr. BUNN. He can also go to Seattle and return through Portland via the Union Pacific?

Mr. WOODWORTH. Yes, sir.

Mr. BUNN. So that this question pertains wholly to the one-way ticket, or wholly to business going to or coming from points east of Cheyenne and Denver?

Mr. WOODWORTH. That is correct.

Mr. DILLARD. I do not think Mr. Woodworth intends to answer that way; that is not so on an eastbound ticket, and I think he overlooked that fact. I call his attention to that for fear I might forget it, and ask you if that is not true on the eastbound ticket.

Commissioner PROUTY. What is not true?

216 Mr. DILLARD. That you can get a round-trip ticket either way.

You can not get a round-trip ticket from Seattle to Portland eastbound, I think. Mr. Bunn's question was if this did not apply solely to one-way tickets, and if round-trip tickets could not be purchased each way. My information is that that is not true as to eastbound round-trip tickets; they can not be purchased through Portland.

Mr. WOODWORTH. I remember when I was at Portland—

Mr. DILLARD. Is that not a fact? If I am wrong, correct me.

Mr. WOODWORTH. I would rather look at the tariff, because I was told in a general way that the diverse route round-trip tickets were open to any route. How is that, Mr. Cleland?

Mr. CLELAND. Tickets from Seattle coming east terminate at Portland on the return trip.

Mr. DILLARD. Isn't it a matter of fact that since the 1st of January you have been terminating at Portland?

Mr. WOODWORTH. Yes.

Mr. DILLARD. And that you did not before, but since January 1st you have done it?

Mr. WOODWORTH. Yes; because you wouldn't pay the cost—

Mr. BUNN. We will put Mr. Cleland on, or somebody who knows more about that than Mr. Woodworth.

217 Mr. DILLARD. The only reason I interrupted was because it happened to occur to me now, and I wanted to correct the statement if it was wrong.

Mr. BUNN. Mr. Woodworth, is there a practical permanent round-trip rate to and from Puget Sound country which is lower than the two one-way tickets?

Mr. WOODWORTH. Yes; there is what they call the year-around tourist rate.

Mr. BUNN. That is how much?

Mr. WOODWORTH. Ninety dollars from St. Paul, as against the double locals of a little less than one hundred dollars; it was about ninety-nine dollars.

Mr. BUNN. From time to time there are round-trip tickets in effect which make still lower rates?

Mr. WOODWORTH. It is the rule to make rates through the summer for conventions, or for some other reason, round-trip rates from St. Paul to North Pacific coast points; they range from fifty dollars to sixty dollars.

Mr. BUNN. That is all.

Commissioner PROTBY. Mr. Lossow, do you desire to ask any questions?

218 Cross-examination:

Mr. Lossow. Mr. Woodworth, you have made these tabulations, or comparisons, with reference to time and equipment from various territories to Seattle, have you not?

Mr. WOODWORTH. Yes; the time is stated in each case, and the equipment is described in the showing from what we might call the basing point, like Omaha, Kansas City, Chicago, and St. Paul. It is not described in each of the succeeding comparisons.

Mr. Lossow. When you make the time as shown in these schedules, your conclusion is that your road is a better road than could be had via the Union Pacific and its lines through Portland?

Mr. WOODWORTH. I know of no other proper measure.

219 Mr. Lossow. In the months of December and January and February do you make the time given in these tabulations via

your northern route? I have reference to snow blockades and so forth, cold winter weather.

Mr. Woodworth. We do with few exceptions, and I have reason to believe that those exceptions are no more frequent than they are with other transcontinental lines.

Commissioner PROUTY. The last time I went across the continent they were all a day late.

Mr. Lossow. During those winter months you have a practically reliable schedule; that is, they are usually on time?

Mr. Woodworth. Yes; with the exceptions which would be expected. We sometimes have a washout. Our trains have been delayed by snow this winter not more than—well the longest delay I heard of on account of snow trouble this winter is twenty hours on the main line. The greater delays we have had were on account of washouts in eastern Washington.

Mr. Lossow. Those washouts occur due to the great accumulation of snow during the winter; in the spring of the year you have more or less trouble that way with washouts, do you not?

Mr. Woodworth. Yes, sir; in common with all the roads  
220 which occupy that territory. I think the record will show

that during this recent heavy snowstorm and succeeding floods, the delays on the O. R. & N. of through trains were as great or greater than the delays on the Northern Pacific and Great Northern. I have been told that in a general way.

Mr. Lossow. I want to ask you, as a passenger man, whether or not it is not a usual practice for railroads to concur in passenger rates when the roads receive their full locals for their part of the haul? Do you know any exception to that? Isn't that the general practice?

Mr. Woodworth. It is not the general practice when the railroad has a possible route for the business which gives them a longer haul and greater earnings.

Mr. Lossow. Right in that connection, don't you make a through route to Seattle via the Great Northern from St. Paul where you get a haul of about thirty miles only?

Mr. Woodworth. You say thirty miles?

Mr. Lossow. Whatever the distance is from Tacoma to Seattle.

Mr. Woodworth. Yes, we take through business, Portland business, from the Great Northern via Seattle and we take it from the Canadian Pacific also via Sumas, Washington.

221 Mr. Lossow. There you have a paralleling line, and if your statement just made is the correct theory you would not allow that practice with the Great Northern, would you?

Mr. Woodworth. We, like many other roads, can not always enforce our claim for the long haul. We made this arrangement with the Great Northern in 1894, the same year in which they made an arrangement with the Oregon Railroad & Navigation Company for handling the Portland business via Spokane. We could either take it at Seattle or not take it at all. The arrangement with the Cana-

dian Pacific was made after they had handled their business between Vancouver and Tacoma, Seattle, and other Puget Sound cities with a steamer line for several years and were about—were planning a road into Seattle. We thought it was advisable to make this contract for interchange with them at the international boundary, at Sumas, and did so; and in connection with that general contract we agreed to handle their business to and from Portland under the terms that are now in effect.

Commissioner PROTBY. Do you handle both freight and passenger?

Mr. WOODWORTH. We handle freight to Seattle only. We have never admitted them on the freight business to Tacoma or  
222 Portland.

Mr. LOSSOW. Your attitude toward the Canadian Pacific and the Great Northern is different than it is toward the other roads?

Mr. WOODWORTH. Only for the reason which I have stated.

Mr. LOSSOW. These contracts?

Mr. WOODWORTH. They had another way to handle their Portland business; that is, the Great Northern had another way to handle their Portland business, and an arrangement with the Canadian Pacific on Portland business was a part of the price we paid for the arrangement which we wanted to make on Seattle business via Sumas.

Mr. LOSSOW. In your tabulations giving the time from Chicago or Kansas City, Omaha, and those points farther west, is that the actual running time or do you include the stop-over the passenger would have to make at St. Paul or Billings?

Mr. WOODWORTH. The lay-over is included in the through time.

Mr. LOSSOW. After May twenty-third you state that you will have more than one outlet from Billings to the West; that is, there will be through rates via the Northern Pacific and the Great Northern?

223 Mr. WOODWORTH. Yes.

Mr. LOSSOW. Will the train service on the inlet road, the C., B. & Q., be correspondingly increased, or will they keep only such trains as they have on now?

Mr. WOODWORTH. No; they have a second train in operation between Kansas City and Billings, and they will simply extend the run of that train to Seattle over the Great Northern.

Mr. LOSSOW. They will not have any more trains between Omaha and Billings than they have now?

Mr. WOODWORTH. Except as they may put on local trains in order to relieve the through trains. I do not know what their plans may be.

Mr. LOSSOW. Do you know of any applications for passengers desiring or preferring that Portland route to the gateways via St. Paul or Billings? Do you know of any applications or requests for the sale of tickets that way?

Mr. WOODWORTH. I do not know of any. I don't doubt that people frequently ask for tickets that way, as they ask for tickets over all kinds of combination routes, according to their plans of travel or their business.

Mr. Lossow. Business may take them via Salt Lake City, or some place like that, and they would, of course, prefer to go  
224 that route?

Mr. Woodworth. That might be true. I met a man yesterday who complained because he could not buy a ticket to the coast reading via San Francisco and Seattle and Spokane and then back by Salt Lake City. He said his business took him there and he thought he ought to have this regular round-trip rate over that route. Of course he had a reason for wanting to go that way.

Mr. Lossow. People going over your northern route one time would naturally prefer a different route, if they were seeking pleasure, another time?

Mr. Woodworth. Yes.

Commissioner PROTBY. That might depend upon what kind of a road they found the first time.

Mr. Woodworth. We have a great many people that like to go one way over our line and the other way over the Great Northern or Canadian Pacific.

Commissioner PROTBY. Now, do you recognize that element, Mr. Woodworth, in determining a satisfactory passenger route?

Mr. Woodworth. I would say no, except as somebody is in a position to compel it. If we can make the man travel both ways over our road we would do it.

Commissioner PROTBY. You don't think there is any difference in that respect between a man and a steer? You have a  
225 right to carry him, provided you get him there in as good a car and in as good a time?

Mr. Woodworth. I have traveled over all of them, and I do not think there is any difference in the scenery or climatic conditions which would be sufficient to warrant us in departing from the business rule?

Commissioner PROTBY. The scenery via the Canadian Pacific, for example, is entirely different from the scenery via your line, and your line is somewhat different from that via the Union Pacific or that via the Denver & Rio Grande, which is different still. The people travel between the east and the coast largely for the purpose of seeing the scenery.

Mr. Woodworth. Yes.

Commissioner PROTBY. Now do you recognize that that is an element which may enter into the making of a satisfactory route, or is the commission, when we inquire whether there is a satisfactory route, obliged to have reference entirely to the character of your train service and the running trains to running time of your trains?

Mr. Woodworth. I do not think it has been recognized except  
226 as a passenger man thought it was necessary to add all these features in order to provoke travel. I do not believe that has been the basis for our concessions of that kind. They have been influenced by other general principles.

Commissioner PROUTY. You realize the fact, do you not, that the scenic qualities of the Canadian Pacific road, for instance, might induce many people to go that way, by the Canadian Pacific?

Mr. WOODWORTH. Yes, we make a round trip rate that way, and they are used by a great many people.

Commissioner PROUTY. Proceed, Mr. Lossow.

Redirect examination:

Mr. BUNN. It is considered, I think, that as to all business going from the east to the west on round trip tickets, the ticket may read over any two transcontinental roads.

Mr. WOODWORTH. That is my understanding.

Mr. BUNN. The only point Mr. Dillard makes is from the west going east, and that I will ask a passenger man about. Mr. Woodward, you made up a statement, which you showed to me yesterday, of places in this country where joint routes were not made between passenger lines. I wish you would read it.

Mr. WOODWORTH. This statement only mentions a few of  
227 those cases, because there are a great many.

Mr. BUNN. In other words, there are a great more than there are on your statement, and you have picked out a few?

Mr. WOODWORTH. Yes, I selected this as illustrative.

Mr. BUNN. Read it.

Mr. WOODWORTH. I would be glad to read the whole thing in. Shall I?

Commissioner PROUTY. Yes, go ahead.

Mr. WOODWORTH. "For each railroad to insist upon the long haul in connection with freight or passengers moving to or from points in its territory, is the general practice, and departures from this rule are voluntary and when not forced by competition are influenced by allowance of excess of indemnifying divisions, or by other considerations. For illustration: The O. R. & N. Company will not join the Northern Pacific in equalizing, via Spokane or other gateways, rates in effect between stations on its lines in Washington, Oregon, or Idaho and points in Eastern States."

Commissioner PROUTY. Now, I do not think, Mr. Woodruff, it would be profitable to go into exceptions of that sort so far as they regard freight traffic.

228 Mr. WOODWORTH. This is tickets.

Mr. BUNN. This is all passenger.

Commissioner PROUTY. I don't know, he started out by saying that was true with respect to both freight and passenger business. The commission recognizes, I think, that you have a right to protect your territory in reference to freight business, and that was our position with reference to this particular territory. Now give any illustrations you have there or read anything you have written on the subject of passengers.

Mr. BUNN. These instances are all passengers.

Mr. WOODWORTH. This refers to passengers.

Commissioner PROUTY. What you say there is that the O. R. & N. decline to equalize. Equalize might be one thing, but opening your line upon the basis of its local rate might be a different thing.

Mr. WOODWORTH. Well, they declined to take through tickets.

Commissioner PROUTY. Declined to make through tickets?

Mr. WOODWORTH. Yes, via Spokane.

Commissioner PROUTY. Proceed now with your statement.

Mr. WOODWORTH. "The O. R. & N. Company do permit the Great Northern to make equal rates via Spokane, but divisions are generally on a basis which equalizes revenue of the O. R. & N. Co., via the Huntington route, regardless of distance passengers are hauled for G. N. For example, on a ticket reading via G. N. through Spokane to Rockford, Washington, on the O. R. & N. Co.'s line, 27 miles south of Spokane, the O. R. & N. receives 25 per cent of the revenue accruing west of St. Paul for the reason, presumably, that it would get this revenue result on a ticket reading via Huntington to Rockford. The Union Pacific will not handle via junction points west of Missouri River at equal rates passengers moving between points on its own line and points on or east of Missouri River. The only exceptions to this rule are Ogden, Salt Lake, and other points in Utah which can be reached by the D. & R. G."

Commissioner PROUTY. Now let me understand just what that statement is. Take some point and illustrate what you mean.

Mr. WOODWORTH. "For example, a passenger cannot buy a ticket from Green River, Wyoming, to Omaha or any point east thereof reading via Denver and any other line than the Union Pacific. Their tariffs carry a provision to this effect and the rule is shown on page 62 of the compendium."

"Prior to the receivership and separate operation of the Oregon Short Line Railroad Company and the agreements which were made by the receivers of the O. S. L. with other connecting lines east of Ogden, this rule of the Union Pacific covered all points on the O. S. L. and O. R. & N. Co.'s lines, both of which were then operated as a part of the Union Pacific System. Tickets cannot be sold from St. Paul or other points in eastern territory via the Northern Pacific through Billings or through Helena to points on the Great Northern. For example, a man cannot buy a ticket from St. Paul to Ubet via the Northern Pacific through Billings, although the distance via that route is shorter than the distance via Great Falls and the train service is such that would permit him to reach his destination with equal, or greater convenience via Billings. In like manner the Northern Pacific objects to the sale by the Great Northern of tickets from St. Paul or other eastern points via Helena or Butte to points further west on line of the Northern Pacific, and there is a similar prohibition on tickets from Seattle or other coast points via N. P. through Spokane to points on the Great Northern east of Spokane, or from Seattle or other Pacific coast points via G. N. through Spokane to points on the Northern Pacific east of Spokane."

Commissioner PROUTY. Now, would it be possible to buy a ticket from St. Paul to Tacoma via the Great Northern to Spokane and the Northern Pacific from Spokane to Tacoma?

Mr. WOODWORTH. No, "the Canadian Pacific will not permit the sale of tickets via any junction point west of Winnipeg to their stations between Winnipeg and Huntingdon Junction, a few miles east of Vancouver. This does not apply to their proprietary line, the Soo Line, which has an arrangement for interchange with the C. P. R. at Portal, N. D. The Chicago & North Western will not interchange passenger business with the Burlington road at Crawford, Nebraska, on through tickets. They do thus interchange with the Union Pacific through Grin Junction and the Colorado and Southern."

Mr. BUNN. That is where the Burlington and North Western cross, I take it, at Crawford?

Mr. WOODWORTH. Yes, that is where the Burlington crosses the North Western. "The Pennsylvania R. R. will not accept from the Wabash or Lake Shore at Pittsburg business from Chicago, St. Louis, or other western common points destined to points on  
232 Pennsylvania R. R. east of Pittsburg."

Mr. BUNN. In other words, you cannot buy a ticket from Chicago over the Lake Shore to Pittsburg and through from Pittsburg to New York on the Pennsylvania Railroad?

Mr. WOODWORTH. No, sir.

Mr. BUNN. Nor to Philadelphia?

Mr. WOODWORTH. No, sir. "Nor will the Pennsylvania lines receive from the Big 4 or other lines at Cincinnati business from St. Louis or other western common points which could have been handled over the Vandalia Line. Nor does the Pennsylvania R. R. receive from other lines at Washington, Baltimore, or Philadelphia, on through tickets, passengers destined to points on their own line, for whom a route is provided over the Fort Wayne, Panhandle, or Vandalia lines. The Chicago & North Western and Chicago, Milwaukee & St. Paul do not interchange business at Sioux City, i. e., through tickets are not sold via C. & N. W. to Sioux City, thence via C., M. & St. P. to western destinations, or via C., M. & St. P. to Sioux City, thence via C. & N. W. to western destinations or vice versa."

Mr. BUNN. You may cross-examine.

233

Cross-examination:

Mr. DILLARD. Mr. Woodworth, you stated that the line from Kansas City, or rather from local points on the Union Pacific through Denver and the Burlington, was more satisfactory and a better line than the Union Pacific line, instancing that the passengers would need to change cars on the Union Pacific both at Portland and at some point en route. Why do they have to change cars at Portland?

Mr. WOODWORTH. Because there is no through service.

Mr. DILLARD. Whose fault is that?



Mr. WOODWORTH. I don't know. If you mean that we would have declined to join you in running a car through I would say that is correct; we would have refused. I do not know whether you ever proposed it, but we would have refused.

Mr. DILLARD. They had to change cars at Portland, then, because the Northern Pacific Line will not run the cars through.

Mr. WOODWORTH. Yes, sir.

Mr. DILLARD. Therefore, in showing why you have a better route, why that route ought to be reasonable and satisfactory, you give as one reason the fact that you will not so arrange your travel as to permit passengers to go through at Portland?

234 Mr. WOODWORTH. We show the conditions just as they exist.

The route would not be better even if cars did run through, as a matter of fact.

Mr. DILLARD. There might be a difference of opinion about that. We will see directly. Now, the illustration which you gave applied to first-class passengers. What would be true of second-class passengers endeavoring to take that route?

Mr. WOODWORTH. Well, from what eastern point would they start, for example?

Mr. DILLARD. Take any local point on the Union Pacific in which they have to go to Denver and catch your train or catch the Burlington at any point, say Ellsworth. Take Ellsworth, a second-class passenger from Ellsworth going through Denver?

Mr. WOODWORTH. They would have the same number of changes by both routes. The difference would be that the second change on the Burlington would be made on the train and without any lay over, while the second change on your road would be made at Portland and subject to a lay over.

Mr. DILLARD. Subject to a lay over?

Mr. WOODWORTH. Yes.

Mr. DILLARD. Do you run any tourist sleeper that way?

235 Mr. WOODWORTH. I do not think there is a tourist sleeper from Denver, is there, Mr. Eustis?

Mr. EUSTIS. There is in the summer.

Mr. WOODWORTH. There is in the summer.

Mr. DILLARD. None in the winter?

Mr. WOODWORTH. None in the winter.

Mr. DILLARD. What is the character of the country between Portland and Seattle. I mean as to whether there are any little towns, any logging business, any farming, anything of that kind in there?

Mr. WOODWORTH. Lumbering is the principal industry in the country lying between the Columbia River and the Puget Sound; there is some dairying, some agriculture; not much.

Mr. DILLARD. Is there not being opened up an agriculture in lands lying east of the Seattle and Portland route?

Mr. WOODWORTH. To some extent.

Mr. DILLARD. But not very largely?

Mr. WOODWORTH. Not yet.

Mr. DILLARD. In giving your distances, you applied them to Seattle alone. If the gateway were open, the distance would be shorter, the time shorter by the Union Pacific to the places which were closest to Portland, would it not?

236 Mr. WOODWORTH. That might be true when you get very near Portland. I think, though, from those eastern gateways through which most of the travel passes we would have an equally satisfactory or more satisfactory route to the principal part of the territory between the Columbia River and Puget Sound. Take Gray's Harbor, for instance.

Mr. DILLARD. I was speaking merely as to the distance. When you get down to these points which are nearer to Portland the time and distance would be somewhat shorter, would they not?

Mr. WOODWORTH. Yes; the distance would be.

Mr. DILLARD. You have several times used the term "satisfactory," and stated that your route would be more satisfactory. More satisfactory to who?

Mr. WOODWORTH. To the passengers.

Mr. DILLARD. More reasonable to the passenger likewise?

Mr. WOODWORTH. I think so, because time is usually—

Mr. DILLARD. Now, as a traffic man, I wish you would therefore please indicate what you understand to be a reasonable route for passenger traffic.

237 Mr. WOODWORTH. I think a route that carried a man from a starting point to his destination as quickly as any other route, and gave him equally good accommodations, did not expose him to pestilence or anything else on the line would be a satisfactory route.

Mr. DILLARD. I will offer this definition as my idea of what is a reasonable route for passenger traffic and ask you whether or not you agree with it and, if not, where you condemn it. I would state a reasonable route to be this: That route which, as to the particular passenger, best accords with the purposes for which the journey is undertaken. Do you object to that definition?

Mr. WOODWORTH. Why, yes; I think the man who has spent his money for the railroad is entitled to some consideration in that connection.

Mr. DILLARD. Then, if I understand you under your idea of a reasonable route, the desires of the passenger, the purposes for which the journey is undertaken, are not to be considered, but the sole question is whether the railroad can get more money out of carrying him another way.

Mr. WOODWORTH. Your definition would oblige us to give that man I met yesterday a ticket back to Chicago reading from Seattle, from Spokane and Yumatilla and Huntingdon down to Salt Lake. Now,

I do not think that would be reasonable.

238 Mr. DILLARD. I am not referring to particularly exceptional cases. I will put this specific question then to you: Your understanding of a reasonable route is that out of which the railroad

can get the most money irrespective of the desires of the traveler, if it furnishes him as good equipment between point of origin and point of destination and as quick time?

Mr. WOODWORTH. Why, no; I haven't suggested that in anything I have said.

Mr. DILLARD. Well, is that your judgment? I will ask you now, is that your opinion of what is a reasonable route?

Mr. WOODWORTH. No.

Mr. DILLARD. Wherein then does it differ from the effect of your testimony?

Mr. WOODWORTH. Your definition would permit us to place undue hardships on the traveler, inconvenience him in any way, and I wouldn't say that we had a right to make him any trouble.

Mr. DILLARD. I think you did not understand my question. Now, just listen, Mr. Woodworth, and please follow me carefully. The point that I gathered from your testimony was this, that you  
239 considered a reasonable route to be one by which the traveler can go from point of origin to point of destination as comfortably and as quickly as he can by any other route if it is to the railroad's pecuniary advantage to carry him that way, irrespective of any desire upon the part of the traveler.

Mr. WOODWORTH. Suppose you read just what I did say.

Mr. DILLARD. I will leave out of consideration what you said and I will ask you now if, in your judgment, that is a reasonable route as to that particular traveler?

Mr. WOODWORTH. Why, I think I would say "yes" to that the way you stated it the last time; that is quite different from the way you stated it the first time.

Mr. DILLARD. I will put it that way. Then, if I understand you as to passenger traffic, you do not consider the personal element of desire of the traveler as in any manner entering, only the pecuniary advantage of the railroad?

Mr. WOODWORTH. Well, after we have arranged to carry him as quickly—

Mr. DILLARD. Wait one moment, please; I am going to let you explain later, but I was going to see if you could answer that "yes" or  
240 "no." I would appreciate it, and then I will let you explain. If you can not answer it yes or no in justice to yourself I won't ask you to do so.

Mr. WOODWORTH. I think I should say that if we carry him as quickly and as comfortably, and there are no unusual conditions that make our route objectionable, that that is as far as we need to go.

Mr. DILLARD. Why do you sell round-trip tickets?

Mr. WOODWORTH. Any of the general passenger agents could probably answer that better than myself.

Mr. DILLARD. I won't insist on the answer if you say you can not answer it.

Mr. WOODWORTH. They are better than myself; but it is my understanding that in round-trip tickets rates less than the sum of the one-

way rate are usually offered to the public for the purpose of provoking travel, encouraging travel, and that is of course the reason for relaxing the original rule, we having the original rights and relaxing them to the extent of permitting this diverse routing. It makes the tourist trip more attractive, and we figure that what we might lose in the case of passengers who might otherwise be influenced to go both ways over our road we perhaps gain in the increased number who make the trip to the Pacific coast.

Mr. DILLARD. You advertise these round trips quite a great  
241 deal in the summer time, do you not?

Mr. WOODWORTH. Yes, we do.

Mr. DILLARD. You advertise the scenic beauties of your road, do you not?

Mr. WOODWORTH. Yes.

Mr. DILLARD. What is the object of that?

Mr. WOODWORTH. It is done with a purpose of inducing people to undertake the trip.

Mr. DILLARD. You, then, in the sale of your round-trip tickets, in the advertisement of your route, recognize that the personal element does enter into the passenger travel, as far as the passenger is concerned, do you not?

Mr. WOODWORTH. Why, people won't go if they don't want to go, and there is a class of travel that is very much influenced by the scenic attractions of the road.

Mr. DILLARD. There is a class of travel that is much influenced by the scenic, you say?

Mr. WOODWORTH. Yes, sir.

Mr. DILLARD. What about the Denver & Rio Grande as a scenic route?

Mr. WOODWORTH. I never have been over it, but I understand—

Mr. DILLARD. Well, its reputation?

242 Mr. WOODWORTH. I understand that they have beautiful scenery on the D. & R. G.

Mr. DILLARD. It appeals greatly to the public, does it not?

Mr. WOODWORTH. I think that it probably does.

Mr. DILLARD. What about Salt Lake City as a place of interest to the public?

Mr. WOODWORTH. I think it would be very interesting.

Mr. DILLARD. What about Seattle and Puget Sound?

Mr. WOODWORTH. I think they are very interesting.

Mr. DILLARD. What about Portland?

Mr. WOODWORTH. The same; and Spokane.

Mr. DILLARD. Now, having so stated, I understand you to say this: If a man at Omaha desires to take a trip for pleasure and go through Denver, then over the D. & R. G. to Salt Lake City, then over our lines to Portland, and then through Portland to Seattle, he is taking that trip for pleasure, or he intends to move out there and is a man of limited means, he has never seen that country, but is very desirous of seeing it; I understand you to say, at least I gather from your

testimony, infer from your testimony, that in your judgment it would be to furnish him a reasonable route, a satisfactory route, to  
 243 say: "No, don't go that way, but come and take the Burlington up to Billings and the Northern Pacific on to Seattle." Do you think so?

Mr. Woodworth. Why, I think we ought to be able to convince him that the trip we offer him is just as interesting as the one you describe. We do give him everything that is advertised as attractive, except the C. B. & Q. and Salt Lake City, and we give him a great deal that he would not get should he travel over your line. He goes through the State of Montana, Butte and Helena, crosses the Rocky Mountains, as beautiful scenery I think as there is anywhere in the United States. He goes through Spokane and can either go down the Columbia River or he can cross the Cascade Mountains where he will find some very beautiful scenery. I think that any man who has been over that route ought to be able to convince him that the road via Billings was just as interesting and attractive as the other.

Mr. DILLARD. Then, if I understand you, it is this: That because in your judgment your route is as interesting and as attractive as the other route he ought to be convinced of that fact and that that is therefore as reasonable a route for him to take and as satisfactory?

Mr. Woodworth. I am saying that he should not be dissatis-  
 244 fied with our route under the conditions that really exist today.

Mr. DILLARD. Suppose that a thick-headed fellow would be dissatisfied?

Mr. Woodworth. Well, there are lots like that man I met yesterday. I don't think that was reasonable.

Mr. DILLARD. Then you don't think the other man who did prefer the Salt Lake City route would be reasonable either; he would be just like your man of yesterday. In other words, you must decide his route for him?

Mr. Woodworth. Well, I think we must or else we must follow him to very great length in the peculiar choice he would make of routes.

Mr. DILLARD. I will suppose that that man was a traveling man or a man of business and that his business called upon him to stop over in Salt Lake City.

Mr. Woodworth. Well his business would probably warrant the expense and the time of a side trip from Denver over there or the payment of the very small sum in addition to the return rate that he would have to pay to get to Seattle.

Mr. BARNES. That is all a matter of argument.

Mr. DILLARD. I think experts' opinions on these matters  
 245 prevail a good deal with the commission at times. You say you once sold round trip tickets to Seattle?

Mr. Woodworth. Why, it was my understanding that round trip tickets were generally sold eastbound. I am sure they are from Portland.

Mr. DILLARD. You don't know about their having been?

Mr. WOODWORTH. No, I think it would be better to ask a passenger man.

Mr. DILLARD. All right. You find having to check baggage at various points, recheck it instead of putting it through on the through route, rather an inconvenience, is it not?

Mr. WOODWORTH. Why, it is not as convenient as the through checking arrangement.

Mr. DILLARD. I see it is quoted, I do not know whether correctly or not, that Mr. Elliott's reply to the Portland Chamber of Commerce, I believe it is, was as follows: "With the Burlington and Northern Pacific we can pick a passenger up almost anywhere east of Colorado common points and sell him a through ticket to Puget Sound, getting the longer haul and the pay for it. Why then should we make an arrangement by which some other railroad can bring him to the Portland gateway and we only get the short haul from the Columbia River to the Sound?" That is simply the reason you don't want the gateway open, isn't it?

Mr. WOODWORTH. I don't know whether Mr. Elliott said that or not.

Mr. DILLARD. I say that is the reason. I see it quoted here. That is your theory of the case, isn't it, of why this route should not be opened?

Mr. WOODWORTH. No; I have tried to state my theory of it.

Mr. DILLARD. All right. Then I won't ask you any further. That is all.

Commissioner PROUTY. Mr. Woodworth, what is the tariff from Chicago to Seattle, if you know?

Mr. WOODWORTH. What is it, Mr. Cleland?

Mr. CLELAND. \$56.90 first class and \$48.00 second class.

Mr. WOODWORTH. \$56.90 first class and \$48.00 second.

Commissioner PROUTY. Can the passenger who pays that fare by your lines stop off? Could he, for example, buy a ticket from here to Seattle and stop over at St. Paul?

Mr. WOODWORTH. Yes, within a limit. What is the limit, Mr. Cleland?

Mr. CLELAND. Thirty days on the first-class tickets.

Mr. WOODWARD. Within the limit of thirty days on the first class and how many days on the second?

Mr. CLELAND. The second class is good for a stop-over in certain territory west of St. Paul, good for ten days at any point.

Commissioner PROUTY. So under your first-class ticket a man may leave Chicago and stop at any intermediate point provided he gets to his destination within thirty days?

Mr. WOODWARD. Yes, generally speaking the stop-over privileges on these transcontinental tickets are very liberal.

Commissioner PROUTY. Do you understand that in point of fact there is a good deal of travel between the East and Seattle via Portland?

Mr. WOODWARD. I think there is, because the Union Pacific by one device or another has made the same rate to Portland and to Seattle.

Commissioner PROUTY. Then as a matter of fact people have gone in the past up to Seattle via Portland at the Portland rate?

Mr. WOODWARD. Yes.

Commissioner PROUTY. Whatever that may have been.

Mr. WOODWORTH. Yes, the volume has not been large but there has been a considerable travel.

248 Commissioner PROUTY. Of how much pecuniary importance to your line is it, in your opinion, whether that gateway is or is not opened?

Mr. WOODWORTH. The effect on our revenue could not be measured by the business which has heretofore been done there through Portland under these unfavorable conditions. The Union Pacific is a very strong line; it has a great many offices all through the East with representatives. They spend large sums of money for advertising, a great deal more than we do, and if that route should be opened and recognized by us they would undoubtedly take away from us a very large part of the business which we are now doing over our longer line either from St. Paul or in connection with the Billings route.

Commissioner PROUTY. They have in past years sold tickets?

Mr. WOODWORTH. Yes, but when a man goes to the ticket office and begins to acquaint himself with the details he discovers that there is this lay over at Portland and the fact is that he cannot check his baggage through and it has a tendency, other things being pretty nearly equal, to discourage him from going that way, and next time to buy his ticket through St. Paul or through Billings. In  
249 other words, even with the equalization of rate, these other things are a very great protection to our long haul.

Commissioner PROUTY. Does the Union Pacific maintain a passenger office in Seattle?

Mr. WOODWORTH. Yes, sir.

Commissioner PROUTY. You can go into that office and buy a ticket from Seattle to any eastern point via Portland?

Mr. WOODWORTH. Yes, sir; also at Tacoma.

Commissioner PROUTY. That is done, I suppose, by selling the passenger your local ticket to Portland?

Mr. WOODWORTH. Yes, sir.

Commissioner PROUTY. With a Union Pacific ticket from Portland to the eastern destination?

Mr. WOODWORTH. Yes, sir.

Commissioner PROUTY. Is there anything more to be asked of Mr. Woodworth?

Mr. LYND. Just one question.

Cross-examination:

Mr. LYND. You open this gateway, do you not, to travel to the south? I mean by that the Southern Pacific or Santa Fe.

Mr. WOODWORTH. Yes.

250 Mr. LYNDE. On one-way tickets?

Mr. WOODWORTH. Yes; we have a general interchange arrangement with the Southern Pacific Company that was made some years ago and covers both freight and passenger business.

Mr. LYNDE. You handle one-way passengers to Seattle and to Portland?

Mr. WOODWORTH. All kinds of business. It is a general arrangement for interchange.

Mr. LYNDE. That applies how far?

Mr. WOODWORTH. I think I am correct in saying that that would apply to anything that was routed over—that is, California business or eastern business routed through El Paso, including certain territory east of the Ohio River.

Mr. CLELAND. Including certain territory east of the Ohio River, including Cleveland, and thence along the line of the Big Four to Cincinnati, and the line of the Queen & Crescent from Cincinnati to New Orleans.

Commissioner PROUTY. Could you buy a ticket from New Orleans to Seattle via Los Angeles, San Francisco, and Portland?

Mr. WOODWORTH. Yes, sir.

Commissioner PROUTY. At the same price at which you could buy it via some other route?

251 Mr. WOODWORTH. Yes.

Commissioner PROUTY. Could you buy a ticket to Chicago from Seattle by that route?

Mr. WOODWORTH. No.

Mr. DILLARD. We have maps, if your honor please, showing exactly about that.

Mr. LYNDE. These one-way tickets carry stop-over privileges of thirty days, or some other limit?

Mr. WOODWORTH. Yes; the same rules that govern all tickets over our own line in a general way.

Mr. LYNDE. And they are substantially the same as to limit as the round-trip ticket, or is the limit broader?

Mr. WOODWORTH. I should say they would be substantially the same.

Mr. LYNDE. That is all.

Redirect examination:

Mr. BUNN. Mr. Woodworth, the completion of the Northbank line and its present opening for passenger business will result in the northern lines giving an alternate route to Puget Sound via Portland?

Mr. WOODWORTH. Yes.

252 Commissioner PROUTY. That seems to be all, Mr. Woodward.  
Mr. BUNN. I will ask Mr. Cleland a few questions.

A. M. CLELAND, called as a witness herein, having been first duly sworn, testified as follows:



Direct examination:

Mr. BUNN. Mr. Cleland, you are general passenger agent of the Northern Pacific Railway Company?

Mr. CLELAND. I am.

Mr. BUNN. Are round-trip tickets from east to west and return sold by any one transcontinental road to return by any other?

Mr. CLELAND. In the sale of round trip transcontinental tickets, Mr. Bunn, with the initial haul westbound—that is, originating in the east—the interchange is quite general so far as destinations are concerned, and so far as routes are concerned they are common.

Mr. BUNN. You can go out via the Northern Pacific and come back via the Union Pacific or the reverse?

Mr. CLELAND. Yes; or come back via the Great Northern or Canadian Pacific or come back through California.

253 Mr. BUNN. And the same rate each way and baggage checked through?

Mr. CLELAND. So far as return is concerned.

Mr. BUNN. It has been indicated by Brother Dillard that that is not true on round trip tickets sold from Puget Sound toward the east and return; how is that?

Mr. CLELAND. That is not true, Mr. Bunn. The tickets that are sold in Seattle, take for example, I think the rate perhaps is \$106.00 to Chicago; we will take that for an example. The ticket reading over our line or reading over the Great Northern from Seattle to St. Paul, thence any of the lines to Chicago, returning any of the lines to the Missouri River and any direct line to Portland, terminates at Portland. It does not return to Seattle.

Mr. BUNN. Did it formerly return to Seattle?

Mr. CLELAND. It did.

Mr. BUNN. Why doesn't it now?

Mr. CLELAND. Because, if I recollect correctly, commencing on about the first of January that was stopped, because of a question of division between the Union Pacific interests and ourselves. We insisted on the division which is commonly used of half the one  
254 way proportion eastbound from the initial point.

Mr. BUNN. You insisted on what, now? I don't understand you.

Mr. CLELAND. We insisted that the Union Pacific in effect should continue as they had been, I think, paying the arbitrary from Portland. There was a controversy arose—I am sorry I am not familiar with the details, however—

Mr. BUNN. Have you anybody who is familiar with them?

Mr. CLELAND. Mr. Poore, I think, is.

Mr. BUNN. I will call Mr. Poore, then.

Commissioner PRUTY. Just a moment, Mr. Cleland.

Mr. CLELAND. Yes, Mr. Prouty.

Commissioner PRUTY. At the present time you concur with the Union Pacific lines from points west on Colorado common points

including Colorado common points as I understood you? That is to say, a man in Denver can buy his ticket to Seattle via Portland; you concur in that joint rate, as I understand it?

Mr. CLELAND. Yes, sir.

Commissioner PROUTY. How long since you have done that?

Mr. DILLARD. July, last year.

Mr. CLELAND. It was last summer some time, Mr. Prouty, I  
255 think July first.

Commissioner PROUTY. Was that before or after this order was served upon your company?

Mr. CLELAND. Before, I think.

Commissioner PROUTY. Previous to that time to what extent had joint rates been made through Portland?

Mr. CLELAND. Not at all.

Commissioner PROUTY. You made no joint rates from any point?

Mr. CLELAND. That is not from any point on the Union Pacific line.

Commissioner PROUTY. At the present time you concur in rates from Colorado common points and from all points west of Colorado common points?

Mr. CLELAND. Yes, sir.

Commissioner PROUTY. Is that true of the Union Pacific, Denver & Rio Grande, and all similar lines?

Mr. CLELAND. Yes, sir.

Commissioner PROUTY. True of all Utah points?

Mr. CLELAND. Yes, sir; equally true of Wyoming and Oregon.

Mr. DILLARD. I desire to examine him, Mr. Commissioner.

Commissioner PROUTY. You may proceed.

256 Cross-examination:

Mr. DILLARD. Now, Mr. Cleland, to refresh your memory, isn't it a fact that this question was up about opening the Portland gateway and that there was correspondence between you and our passenger people with regard to opening it, whether we should pursue the course we have now, and that you finally consented to make a line east of Cheyenne, from the Cheyenne and Colorado common points, and that this same question was *was* up at that time and had been up with the commission, and you knew it was up with the commission?

Commissioner PROUTY. This order was served May 1st.

Mr. DILLARD. Yes; I wanted to refresh his memory.

Mr. BURNS. I agree, Mr. Dillard, that it was about the same time this thing was under discussion.

Mr. DILLARD. Yes. Now, isn't it a fact that you received a wire or letter from Mr. Stubbs substantially to this effect: That what you proposed to do did not satisfy the needs of the public, but that the Union Pacific and its joint lines would not stand in the way of giving such accommodations as it could to the public, and it would therefore be glad to concur with you in opening the territory as far east

257 but would still insist upon its position that it ought to be open to all territory?

Mr. BUNN. I have that telegram in my files.

Mr. DILLARD. Then there is no question about it?

Mr. BUNN. There is no question about it.

Mr. DILLARD. All right. That is all I want. Mr. Cleland, if I followed you correctly—I may not have done so—I understood you to say that round-trip tickets were formerly sold reading from Portland to Seattle and that you could check the baggage as far as Seattle on those round-trip tickets. Was that a fact?

Mr. CLELAND. No; baggage could be checked only to Portland.

Mr. DILLARD. The baggage would be checked to Portland?

Mr. CLELAND. Yes, sir.

Mr. DILLARD. Under those round-trip tickets, using passenger parlance, when they were sold from the east via Portland, what was the termination—the destination of the ticket?

Mr. CLELAND. Will you repeat that question, please?

Mr. DILLARD. Suppose a ticket was sold at Omaha reading over the Union Pacific, going via Portland to Seattle, returning over the Northern Pacific and by Billings back to Omaha. What did  
258 you passenger men style the going destination of the ticket?

Mr. CLELAND. I should have to refer to a tariff on that, Mr. Dillard.

Mr. DILLARD. Was it not Portland, to refresh your recollection?

Mr. CLELAND. I couldn't say.

Mr. DILLARD. You don't remember the rate and all divided on the Portland basis, that that was made the basis of division?

Mr. CLELAND. You are talking about eastbound business?

Mr. DILLARD. I am talking about westbound business.

Mr. CLELAND. Westbound business, Portland was the destination.

Mr. DILLARD. Westbound business, Portland was the destination on that business?

Mr. CLELAND. Yes, sir.

Mr. DILLARD. Isn't it a fact that while that method of selling round-trip tickets was in existence that the Northern Pacific at the same time sold tickets from Seattle passing around through Portland to Seattle?

Mr. CLELAND. Sold tickets from Seattle?

Mr. DILLARD. Sold from Seattle eastward on either the Great  
259 Northern or Northern Pacific or Burlington, and then to return through Portland to Seattle?

Mr. CLELAND. We did that; yes, sir.

Mr. DILLARD. What did you receive on that return portion of the ticket from Portland to Seattle?

Mr. CLELAND. I couldn't say, offhand.

Mr. DILLARD. Mr. Cleland, the course that you were pursuing at that time was not consistent with the position you are taking in this hearing, was it?

Commissioner PROUTY. Well, if he don't know what the course was, Mr. Dillard, he could not answer the question.

Mr. DILLARD. He does know; he has stated the course, but he didn't know the division. That was all. He knew exactly what was done, as I understood him, and now the question I put to him was whether that course was consistent with the position he is now taking.

Mr. CLELAND. Well, I think it could be said that it was not consistent.

Mr. DILLARD. It was not consistent?

Mr. CLELAND. Yes, sir.

Mr. DILLARD. Then until this matter got as hot, so to speak, as it is, you were doing practically the same thing that our  
260 lines want you to do now, were you not?

Mr. CLELAND. The effect was the same.

Mr. DILLARD. The effect was the same?

Mr. CLELAND. Yes, sir.

Mr. DILLARD. Then why did you do that and are unwilling to do it now? Why did you do it then and are unwilling to do it now?

Mr. CLELAND. Well, it was a custom that I found when I went there, Mr. Dillard. I could not say offhand why it was inaugurated.

Mr. DILLARD. Why did you pursue it?

Mr. CLELAND. Because it produced revenue at that time.

Mr. DILLARD. In other words, to use the passenger phraseology, you were shorthauling yourself, weren't you?

Mr. CLELAND. Yes, sir.

Mr. DILLARD. But now, when our lines insist upon that being the effect, to be consistent, since this hearing has come up, you have abandoned that custom and say it ought not to be done?

Mr. CLELAND. Well, not wholly for that reason; there were other reasons, Mr. Dillard.

Mr. DILLARD. Isn't it a fact that the reason you continued  
261 that custom which you found inaugurated there is because there was a large demand for that kind of a ticket and that route?

Mr. CLELAND. I wouldn't want to say a large demand, unless I knew how many tickets were demanded.

Mr. DILLARD. Well, a demand?

Mr. CLELAND. There was a demand. There is a demand for all sorts of routes.

Mr. DILLARD. That is all.

Commissioner PROUTY. As I understand you, to-day a passenger in Chicago can buy a ticket to Seattle via Portland returning to Chicago via the Northern Pacific?

Mr. CLELAND. Buy a ticket to Portland returning through Seattle?

Commissioner PROUTY. I don't care how you put it, but he can go from Chicago?

Mr. CLELAND. Yes.

Commissioner PROUTY (continuing): For the round-trip fare from Chicago he can go from Chicago to Seattle via Portland and back via Seattle over your line to Chicago?

Mr. CLELAND. Yes, sir.

Commissioner PROUTY. And you think that is perfectly consistent with the position you take now?

Mr. CLELAND. Yes, sir.

262 Commissioner PROUTY. But you say when you sell that man a ticket from Seattle to Chicago and from Chicago back to Seattle through Portland, that is not consistent with the position you take now?

Mr. CLELAND. That is true.

Commissioner PROUTY. Now, won't you take just long enough to explain the difference between those two things?

Mr. CLELAND. Will you repeat that question, please?

Commissioner PROUTY. I say, take time enough to explain to me the difference between those two things. You say it is perfectly consistent to let the man go from Chicago through Portland to Seattle and from Seattle back to Chicago via the Northern Pacific; but it is not consistent to allow him to come from Seattle to Chicago and go from Chicago back to Seattle through Portland. What is the difference?

Mr. CLELAND. Well, the principal difference which prevented the sale of tickets was the question of divisions.

Commissioner PROUTY. That is another matter entirely; that is a difference between you and the Union Pacific as to the divisions you should receive out of the transaction. But upon the service, so far as the thing done is concerned, why isn't one transaction exactly like the other? In other words, they are both round-trip tickets; they are a  
263 round trip from Chicago back to Chicago through Seattle, or from Seattle through Chicago back to Seattle. The routes are identical in either case?

Mr. CLELAND. Well, competition may —

Commissioner PROUTY. If you have declined to sell eastern tickets because you cannot agree with the Union Pacific as to your divisions, that is one thing. If you have declined to have the sale of those tickets continued because you think it is inconsistent with the position you assume, why that is another thing. Now, which is the reason why you decline to sell those tickets?

Mr. CLELAND. We decline to sell those tickets for both reasons, because of the question of the division and because, I think, we felt it was a recognition of the route through Portland.

Commissioner PROUTY. Why is it a recognition any more than in the other case?

Mr. CLELAND. In the other case the competition was different. In one case Seattle is the starting point and, having no arrangement with the Union Pacific for interchange of business at Portland, we do not feel impelled to sell tickets that way. While on the other hand the competition forces the sale of tickets from Seattle to Portland and an equal division.

Commissioner PROUTY. Then it is simply from your standpoint what you have to do and nothing more?

264 Mr. CLELAND. No; I don't want you to feel that way.

Commissioner PROUTY. That seems what it reduces itself to.

Mr. CLELAND. I don't want you to feel that way. Perhaps I do not make myself clear.

Mr. BUNN. Let me ask one question which I think may throw light on that. The rate from the east to Portland and Seattle is the same?

Mr. CLELAND. Just exactly the same.

Mr. BUNN. And the Northern Pacific has a line from Seattle down to Portland and sells a Portland ticket at the same price it sells the Seattle ticket?

Mr. CLELAND. Yes, sir.

Mr. BUNN. You do not mean to be understood, do you Mr. Cleland, that you have ever sold one-way tickets joint with the Union Pacific?

Mr. CLELAND. Oh, no; no, sir.

Commissioner PROUTY. He has not said that.

Mr. BUNN. I did not think he had.

Cross-examination:

Mr. LOSSOW. In your trouble about the division with the  
265 Union Pacific, did you demand more than your local, or less, or can't you answer.

Mr. CLELAND. No, sir; the local, I think.

Mr. LOSSOW. You demanded your local?

Mr. CLELAND. Yes, sir.

(Witness excused.)

A. C. POORE, called as a witness herein, having been first duly sworn, testified as follows:

Direct examination:

Mr. BUNN. You are assistant general passenger agent of the Northern Pacific?

Mr. POORE. Yes, sir.

Mr. BUNN. I want you to tell to Mr. Prouty why you stopped selling round-trip tickets from Seattle east and return through Portland about the first of January, as Mr. Cleland has said.

Mr. POORE. It was, according to my understanding, chiefly because they asked for an unfair basis of division. We desired to divide the  
266 tickets on the usual basis, half going and half returning to the destination, and the Union Pacific and connection not pay the cost of handling passengers from Portland to Seattle. They wanted us to carry them free from Portland to Seattle.

Mr. BUNN. I do not want to go into the details of this controversy with the Union Pacific, because we cannot consider that, but the point, if I understand it, Mr. Poore, was, that on that ticket they wanted you to haul from Seattle down to Portland for nothing.

Mr. POORE. In the opposite direction, from Portland to Seattle for nothing.

Mr. BUNN. And you thought that was not right?

Mr. POORE. Yes, sir.

Mr. BUNN. That is all.

Cross-examination:

Mr. DILLARD. Just a question or two. You have abandoned that and sell up to Portland now?

Mr. POORE. Yes, sir.

Mr. DILLARD. You say they wanted you to sell for nothing. How were the regular round-trip tickets sold from eastern points, for instance, through Portland? Did they break on Portland? You  
267 made your division there on Portland, did you not?

Mr. POORE. On Portland; yes, sir.

Mr. DILLARD. You had inaugurated a plan up there at Seattle, however, of selling a ticket from Seattle east and then back through Portland over the Union Pacific to Seattle, and they wanted to apply the general round-trip principle to the division of that fare when they found it out, didn't they?

Mr. POORE. No, sir; they wanted to make an exception and not divide on the usual basis of half going and half return. They wanted to get back to Seattle without any expense to themselves.

Mr. DILLARD. They didn't want to divide on the usual basis.

Mr. POORE. No, sir; they wanted to make an exception. The usual basis of divisions is to divide from starting point to destination, half going and half returning.

Mr. DILLARD. What basis did you want to divide on? How did you want the division?

Mr. POORE. Wanted to divide half going and half returning—half from Seattle to Chicago, and half from Chicago back to  
Seattle.

268 Mr. DILLARD. Was it not your insistance that you should get your local rate?

Mr. POORE. Yes, sir; out of the return haul.

Mr. DILLARD. Out of the return haul?

Mr. POORE. Yes, sir; that is, the Union Pacific should pay the expense of getting the passenger from Portland back to Seattle.

Commissioner PROUTY. You wanted them to pay you on your return ticket just what they would be called upon to pay on the local ticket?

Mr. POORE. Yes, sir; exactly.

Mr. DILLARD. You want the Union Pacific to pay you their local ticket?

Mr. POORE. We want the Union Pacific to pay the expense which was our local fare, and we would have sold round-trip tickets via the short line to Seattle on that basis.

Mr. DILLARD. That is just what they are doing now—paying your local fare?

Mr. POORE. Tickets are not being sold to return via Portland to Seattle.

Mr. DILLARD. No; but when they —

269 Mr. POORE. Yes.

Mr. DILLARD. And you abandoned  
you thought it was inconsistent with the po—

Mr. POORE. Abandoned it because it was —  
now?

Mr. DILLARD. And that is not consistent with the position you  
are taking now?

Mr. POORE. I would not like to say. Conditions differ.

Mr. DILLARD. On that I read a letter from Mr. Cleland, G. P. A. S.,  
under date of December 16, 1908:

"Mr. E. L. LOMAX, G. P. A.,

*"Union Pacific R. R., Omaha, Nebr.*

"DEAR SIR: Referring to your favor of the 9th inst., file Q 722, I  
beg to advise that our tourist tariff 'T' No. 3, effective January 1,  
1909, provides for the sale of tickets returning to Portland, Oregon,  
only when returning via Huntington or via California—conform to  
our position relative to the Portland gateway."

Mr. POORE. Yes, sir.

270 Mr. DILLARD. Then up to the time that you put in effect that  
tariff, what you were doing is practically what the Union Pa-  
cific and its connecting lines want done now?

Mr. POORE. Yes, sir; they want to get there for nothing.

Mr. DILLARD. And you have changed your practice so as to conform  
to your present position?

Mr. POORE. Yes, sir.

Mr. DILLARD. That is all.

(Witness excused.)

Commissioner PROUTY. We will take a recess until two o'clock p. m.  
Whereupon a recess was taken until two o'clock p. m. Wednesday,  
February 17, 1909.

271 WEDNESDAY, FEBRUARY 17, 1909—TWO O'CLOCK P. M.

The commission met pursuant to adjournment.

Present as before.

Commissioner PROUTY. Mr. Bunn, did you desire to ask some  
further questions of some other witness?

Mr. BUNN. No other witnesses, Mr. Commissioner.

Commissioner PROUTY. Mr. Dillard, will you introduce some wit-  
nesses now?

W. H. MURRAY, called as a witness herein, having been first duly  
sworn, testified as follows:

Direct examination:

Mr. DILLARD. What is your name?

Mr. MURRAY. W. H. Murray.

Mr. DILLARD. Your residence?



Mr. MURRAY. Omaha.

Mr. DILLARD. Your business?

Mr. MURRAY. Assistant general passenger agent.

272 Mr. DILLARD. How long have you occupied that position, Mr. Murray?

Mr. MURRAY. Two years.

Mr. DILLARD. Have you been connected with the Union Pacific a long time, a longer time than that or with any other of the railways?

Mr. MURRAY. With the Union Pacific for twenty-two years.

Mr. DILLARD. Do you ticket passengers through Portland at the present time to Seattle?

Mr. MURRAY. We ticket them to Portland with an exchange order on Portland, thence to Seattle.

Mr. DILLARD. What efforts have been made in the past within your knowledge to obtain a general through rating and routing arrangement from Portland to Puget Sound points?

Mr. MURRAY. Well, the Union Pacific have endeavored for years through its connections, the short line and O. R. & N., to get into Puget Sound territory.

Mr. DILLARD. Have they ever been willing to agree with you as to making such through routes?

Mr. MURRAY. They never have.

273 Mr. DILLARD. In order, therefore, to get your passengers to such points north of Portland, you have had to resort to other means?

Mr. MURRAY. Yes, sir.

Mr. DILLARD. Now, Mr. Murray, have you a short statement there in writing showing the history of the ticketing method?

Mr. MURRAY. I have.

Mr. DILLARD. Without questioning you as to what it shows, I wish you would please file one copy with the commission and give another to Judge Bunn.

Mr. MURRAY. Well, I have one here for Mr. Bunn. If your honor please, this is simply a statement that I thought would be of service to the commission in showing the method that has been pursued in the years that have gone by and at the present time.

(Which said document so offered and received in evidence was marked "Murray Exhibit 1," and is hereto attached and made a part hereof.)

Mr. DILLARD. That statement calls for certain exhibits in the nature of tariffs. They are not attached, are they?

Mr. MURRAY. Yes, sir.

Mr. DILLARD. The tariffs are not attached, are they?

Mr. MURRAY. They are not attached; no, sir.

274 Mr. DILLARD. They are not attached, may it please your honor, because the references will be sufficient. You have them on file and I did not intend to incumber the record. You do have attached there the few concurrences of the Northern Pacific in our proposed tariffs?

Mr. MURRAY. Yes, sir.

Mr. DILLARD. The first concurrence, would it be properly designated a concurrence, or rather a nonconcurrence?

Mr. MURRAY. It would be a nonconcurrence.

Mr. DILLARD. Why do you so style it, Mr. Murray?

Mr. MURRAY. Because it practically cuts the Union Pacific out of doing any business to Puget Sound points through Portland.

Mr. DILLARD. What does it cover? You must read that part of it so that it might be written in the record, the exception.

Mr. MURRAY. From points in Arizona, California, Mexico, Nevada, New Mexico, and Utah, when routed via Southern Pacific lines to Portland, from points on and south of the Texas & Pacific Railway lines, from El Paso via Shreveport to New Orleans, when routed via El Paso and the Southern Pacific lines to Portland, and  
275 from points on and east of the lines of the Louisville & Nashville Railroad, and Queen & Crescent route from New Orleans to Cincinnati, and the line of the Cleveland, Cincinnati, Chicago & St. Louis Railway, from Cincinnati via Columbus to Cleveland, when routed via New Orleans and the Texas Pacific Railway or the Southern Pacific lines to El Paso and the Southern Pacific lines to Portland.

Mr. DILLARD. In July of last year they concurred in our tariff when the origin and routing was in a certain direction. What is that? You might just show the territory there; it will be more convenient probably to find it in the record than it would from the exhibit.

Mr. MURRAY. From points on the Union Pacific Railroad in Colorado and Wyoming, and points on and west of that line, Denver, Colorado to Cheyenne, Wyoming, and from points in Utah when routed via Huntington, Oregon.

Mr. DILLARD. Mr. Stenographer, will you please get that copy and mark it "Murray Exhibit 1."

Commissioner PROUTY. Mr. Murray, would it be possible to buy a ticket from Washington, D. C., to Seattle via New Orleans, El Paso, Los Angeles, and the Southern Pacific?

Mr. MURRAY. Yes, sir.

Commissioner PROUTY. At the same price that you can via  
276 Chicago and the Union Pacific or Great Northern?

Commissioner MURRAY. Yes, sir.

Commissioner PROUTY. So you can buy your ticket via the southern route and the Shasta route through Seattle?

Mr. MURRAY. Yes, sir.

Commissioner PROUTY. You would not be able to buy it via the Union Pacific and Portland to Seattle?

Mr. MURRAY. No, sir.

Commissioner PROUTY. You might buy it by way of Chicago, St. Paul, and the Northern Pacific?

Mr. MURRAY. Yes, sir.

Mr. DILLARD. Mr. Murray, have you some map there showing the passenger territory generally?

Mr. MURRAY. I have.

Mr. DILLARD. I wish you would hand one to Mr. Bunn and file another. They are simply for convenience, if you honor please. Will you please mark that "Murray Exhibit 2?"

(Which said document so offered and received in evidence was marked "Murray Exhibit 2," and is hereto attached and made a part hereof.)

Mr. DILLARD. Have you also some maps showing to what points the concurrences apply?

277 Mr. MURRAY. Yes, sir.

Mr. DILLARD. Please let the stenographer mark that "Murray Exhibit No. 3," and hand that to Mr. Bunn and one to the commissioner.

(The said document so offered and received in evidence was marked "Murray Exhibit 3," and is hereto attached and made a part hereof.)

Mr. DILLARD. The red line commencing at Cleveland, Ohio, and passing to El Paso, indicates what?

Mr. MURRAY. It indicates the boundary of the concurrence of the Northern Pacific Railway.

Mr. DILLARD. What concurrence?

Mr. MURRAY. The one of 1907.

Mr. DILLARD. And the points of origin included in that concurrence lie east and south of the red line?

Mr. MURRAY. Yes, sir.

Mr. DILLARD. The green line indicates what?

Mr. MURRAY. The green line indicates the new concurrence effective July 2, 1908.

Mr. DILLARD. In all of that territory lying north and west of the red line marking out the old concurrence exclusive of the part  
278 included in the green line, all that territory I say is excluded from purchasing through tickets one way via Portland to Seattle?

Mr. MURRAY. Yes, sir.

Mr. DILLARD. In your judgment, do the existing routes afford reasonable or satisfactory route for all people in that excluded territory? If not, I wish you would be kind enough to state why, from your expert knowledge and from your traffic experience, the route through Portland to Puget Sound points should be opened; what reasons appeal to you.

Mr. MURRAY. The passengers purchasing tickets, invariably, it has been our experience, insist on having a route through Salt Lake City or through Colorado and Huntington. The people making the trip out there either for business or for pleasure usually are looking after land to make homes, and they find that along the Oregon Short Line and O. R. & N. in Utah, Idaho, and Oregon.

Mr. DILLARD. Is there a considerable demand from the excluded territory for tickets and through routing by the way of Portland to Puget Sound points?

Mr. MURRAY. Yes, sir.

Mr. DILLARD. Mr. Murray, have the various connecting lines  
279 had made statements showing passenger tickets sold calling for  
the routing through Portland to Seattle?

Mr. MURRAY. Yes, sir, they have.

Mr. DILLARD. I wish you would get the statement there that we  
have marked for our personal use "B;" that had better be marked  
"Murray Exhibit No. 4."

(Whereupon said document so offered and received in evidence,  
was marked "Murray Exhibit No. 4," and is hereto attached and  
made a part hereof.)

Mr. DILLARD. What does that statement indicate, Mr. Murray?

Mr. MURRAY. The summary of one-way passenger business to  
Puget Sound points from territory east of Cheyenne, Wyoming, and  
Colorado points via the Union Pacific Railroad in connection with  
the Oregon Short Line, the O. R. & N., and Portland, showing the  
business from the territory of each association, and the approximate  
total revenue derived therefrom by the Union Pacific Railroad,  
Oregon Short Line, and the O. R. & N. Railroad Company for the  
years 1904 to 1908.

Mr. BUNN. This includes the revenue of all of those lines added  
together?

Mr. MURRAY. It includes the revenue of the Union Pacific, Oregon  
Short Line, and O. R. & N. only.

280 Mr. BUNN. Yes; that is what I say.

Mr. DILLARD. This is over what road?

Mr. MURRAY. Over what?

Mr. DILLARD. Over what road west of Omaha?

Mr. MURRAY. Over the Union Pacific.

Mr. DILLARD. Through the Union Pacific?

Mr. MURRAY. Yes, sir.

Mr. DILLARD. The total number of passengers you have there is  
what?

Mr. MURRAY. Seventeen thousand eight hundred and nineteen.

Commissioner PROUTY. For how long a time?

Mr. MURRAY. Five years. That only includes the Union Pacific.

Commissioner PROUTY. Do you mean that the Union Pacific is the  
road originating the business at Omaha?

Mr. MURRAY. No.

Commissioner PROUTY. Or some point west of Omaha?

Mr. MURRAY. No; this originates from various associations east  
of the Missouri River.

Commissioner PROUTY. But you receive the business at Omaha  
or some point west of Omaha?

281 Mr. MURRAY. Yes, sir; we received this at Omaha.

Commissioner PROUTY. From your connections?

Mr. MURRAY. From our connections.

Commissioner PROUTY. Would that include business that went,  
for example, through Kansas City and by some other route to Denver  
and then by the Denver and Rio Grande up to Ogden?

Mr. DILLARD. No, sir; those we are going to introduce. This is only passengers passing over the Union Pacific and from the Union Pacific to the O. S. L. We have another statement for lines other than the Union Pacific.

Commissioner PROUTY. Was this business delivered by the Union Pacific to the Oregon Short Line?

Mr. MURRAY. Yes, sir.

Mr. DILLARD. Now, Mr. Murray, you have an exhibit there marked as our exhibit "C." I will have that marked "Murray Exhibit 5." Or, wait one moment; haven't you one there that you marked exhibit "B 3?"

Mr. MURRAY. I have one of ours here marked "A" that I have not mentioned.

Mr. DILLARD. Let me see that exhibit. There seems to be a little mix up there; one of them is gone. Yes, that is it. Let that be marked "Murray Exhibit 5."

282 (Which said document so offered and received in evidence was marked "Murray Exhibit 5," and is hereto attached and made a part hereof.)

Mr. DILLARD. What have you there, Mr. Murray?

Mr. MURRAY. Summary of round-trip passenger business, including only revenue westbound to Puget Sound points from territory east of Cheyenne, Wyoming, and Colorado common points via Union Pacific Railroad in connection with the Oregon Short Line, Oregon Railway & Navigation Company, and Portland, Oregon, showing the business from the territory of each passenger association, and the approximate total revenue derived therefrom by the Union Pacific, Oregon Short Line, and O. R. & N. company for the years 1904 to 1908.

Mr. DILLARD. How many round-trip passengers does that show?

Mr. MURRAY. It shows 1374.

Mr. DILLARD. Those exhibits that you have already introduced are summaries first of the one-way passenger, second of the round-trip passengers for the years named, handed over by the Union Pacific to the O. S. L.?

Mr. MURRAY. Yes, sir.

283 Mr. DILLARD. Have you there any detailed statement bearing on the same point?

Mr. MURRAY. I have.

Mr. DILLARD. Now, one moment before you state what those detailed statements are. Let me make this statement, Mr. Bunn, which is a fact that I can prove by the witness. Those detailed statements, if your honor please, were first made out including Denver and Cheyenne by a mistake of the auditor. Inasmuch as the territory under the second concurrence extends to Denver and Cheyenne, the summaries which have already been introduced show the origin of passengers east of Denver and Cheyenne, but the detailed statements include passengers east of Denver and Cheyenne, and also including Denver, Cheyenne, and Colorado common points.

Commissioner PROUTY. To what extent are these statements made out in detail?

Mr. DILLARD. I am going to show just now. Those statements that you have there, Mr. Murray, which you now introduce—what is the next one that you have?

Mr. MURRAY. The number of passengers carried and Union Pacific road westbound passenger revenue derived from round-trip  
284 passenger business originating Denver, Cheyenne, and east thereof, destined to Puget Sound points via Portland, routed via Union Pacific to Ogden or Granger, thence O. S. L. and routed via Union Pacific to Denver, D. R. & G., thence O. S. L., separated as between the various passenger associations.

Mr. DILLARD. You had better let that be marked "Murray Exhibit 6."

(Which said document so offered and received in evidence was marked "Murray Exhibit 6," and is hereto attached and made a part hereof.)

Mr. DILLARD. That, if your honor please, shows the various passenger associations in which the traffic originates. Does that answer the question?

Commissioner PROUTY. Yes. He has already introduced a summary showing the number of round-trip tickets handled by the Union Pacific?

Mr. DILLARD. Yes.

Commissioner PROUTY. And showing the number of passengers received by the Oregon Short Line from the Union Pacific?

Mr. DILLARD. Yes.

Commissioner PROUTY. This statement also seems to include  
285 the number of passengers received by the Oregon Short Line from the Denver & Rio Grande?

Mr. DILLARD. Yes.

Commissioner PROUTY. But there is no summary introduced yet to show the number of passengers received from the Denver & Rio Grande by the Oregon Short Line, as I understand.

Mr. DILLARD. Have you that there, Mr. Murray, that summary?

Mr. MURRAY. It is marked "E."

Commissioner PROUTY. Now, what is the number of passenger delivered by the Denver & Rio Grande to the Oregon Short Line?

Mr. MURRAY. Thirteen thousand six hundred and ninety.

Mr. BUNN. To Puget Sound points?

Mr. MURRAY. Yes, sir.

Commissioner PROUTY. As I remember it, then, during this period which was five years—

Mr. MURRAY. Yes.

Commissioner PROUTY. You handled 1,300 passengers on round-trip tickets?

Mr. MURRAY. Yes, sir.

Commissioner PROUTY. You handled 17,000 passengers over the Union Pacific and 13,000 passengers which came over the  
286 Denver & Rio Grande?

Mr. MURRAY. One way; yes, sir.

Commissioner PROUTY. Those were one-way tickets?

Mr. MURRAY. And 801 round-trip tickets.

Commissioner PROUTY. How many?

Mr. MURRAY. Eight hundred and one.

Commissioner PROUTY. That is via the Denver & Rio Grande?

Mr. MURRAY. The D. & R. G.; yes.

Commissioner PROUTY. Does that include business both east and west, both ways?

Mr. MURRAY. No, sir; this is only westbound business.

Mr. DILLARD. I will have that marked "Murray Exhibit 7."

(Which said document so offered and received in evidence was marked "Murray Exhibit 7," and is hereto attached and made a part hereof.)

Mr. DILLARD. What is that, the summary?

Mr. MURRAY. Yes, sir; the grand recapitulation.

Mr. DILLARD. Take your number "G" there, Mr. Murray; what is your statement "G"?

Mr. MURRAY. Statement showing number of one-way passengers and Oregon Short Line revenue on westbound passenger  
287 traffic destined to Puget Sound points, via Portland, originating in Western Passenger Association, routed via Ogden and Denver & Rio Grande Railroad, and its connections, other than the Union Pacific Railroad Company, for the year 1907.

Mr. DILLARD. That will then show where the passengers came from?

Mr. MURRAY. Show where the passengers came from; shows from what points in the different States.

Mr. DILLARD. That will be marked "Murray Exhibit 8."

(Which said document so offered and received in evidence was marked "Murray Exhibit 8," and is hereto attached and made a part hereof.)

Mr. DILLARD. I desire to state, if your honor please, that these detailed exhibits and matters were only requested since the notice of the hearing was sent, and they are as full and complete as we can make them, but from evidence we will introduce in a moment we think they do not include all of the passengers. We have another check showing, probably in a better form, exactly how many passengers did go. What would be the trouble in making these particular statements, Mr. Murray?

288 Mr. MURRAY. There was not sufficient time after the call for this hearing.

Mr. DILLARD. You put all of the force you could to work on it?

Mr. MURRAY. Yes, sir; worked day and night.

Mr. DILLARD. You have to make them in what way?

Mr. MURRAY. We would have to make them up in the form we have made them here.

Mr. DILLARD. I mean what examination would you have to make to get the statements?

Mr. MURRAY. An examination of foreign lines report for the period desired.

Mr. DILLARD. All of the passengers herein named did pass over these various routes as shown in the statements?

Mr. MURRAY. Yes, sir.

Mr. DILLARD. You have there what you call Exhibit II?

Mr. MURRAY. Yes, sir.

Mr. DILLARD. State what that is.

Mr. MURRAY. Statement showing number of tickets purchased from Northern Pacific Railway Company at Portland in exchange for foreign lines issue, originating east of Cheyenne and Denver to  
289 Puget Sound points during the years 1904 to 1908, inclusive.

Mr. DILLARD. That may be marked "Murray Exhibit 9."

(Which said document so offered and received in evidence was marked "Murray Exhibit 9," and is hereto attached and made a part hereof.)

Mr. DILLARD. This, then, would indicate the actual tickets that were purchased on exchange orders at Portland, would it?

Mr. MURRAY. Yes, sir.

Mr. DILLARD. Take the footings of that, Mr. Murray.

Mr. MURRAY. I had a memorandum of that; that is not shown here. I can give them individually: 1904, 6,309; 1905, 8,816; 1906, 6,756.

Commissioner PROUTY. Six thousand seven hundred and fifty-six what?

Mr. MURRAY. Six thousand seven hundred and fifty-six passengers.

Mr. BUNN. That is, tickets that they purchased at Portland?

Commissioner PROUTY. I so understood. Proceed.

290 Mr. MURRAY. 1907, 12,012; 1908, 5,774.

Mr. DILLARD. That foots up something like 50,000, doesn't it?

Mr. MURRAY. Forty-nine thousand, I think it is.

Mr. DILLARD. Forty-nine thousand and something?

Mr. MURRAY. Yes, sir.

Commissioner PROUTY. Your other statement only showed about thirty thousand.

Mr. DILLARD. The other statement shows some forty-odd thousand; there is about seven thousand difference. I think, in the two statements, but these were checks of the tickets as nearly as they could be in the time allowed; and for the purpose of getting the various territories in which the business originated, that we might show with as specific exactness as possible the actual number of passengers who did take advantage of these arrangements, we also counted the actual exchange orders and ticket purchases, tickets that had actually been purchased as being more certain, and in the time we could get that much more accurately, and this is the number of tickets that were actually purchased. Now, Mr. Murray, coming west this way



291 from Puget Sound points, via Portland, have you any exhibit there?

Commissioner PROUTY. Before you answer that question, Mr. Murray, let me ask you one. From points how far east did you issue these exchange orders?

Mr. MURRAY. From all over the country.

Commissioner PROUTY. From points how far west?

Mr. MURRAY. As far west as Denver and Cheyenne.

Commissioner PROUTY. Did you issue them from Denver and Cheyenne?

Mr. MURRAY. At that time; yes, sir; some of them.

Commissioner PROUTY. So you would issue them from Denver and Cheyenne and other Colorado common points?

Mr. MURRAY. Yes, sir.

Commissioner PROUTY. But not from points west of Colorado common points?

Mr. MURRAY. Well, in Wyoming there some of them were issued, and I presume the Oregon Short Line in Utah.

Commissioner PROUTY. The rates from Chicago to Seattle seem to be the same as the rates from Chicago to Portland. Is that correct?

Mr. MURRAY. Yes, sir.

Commissioner PROUTY. What is the rate from Chicago to  
292 any other point between Portland and Seattle, upon the Northern Pacific?

Mr. MURRAY. The same rate.

Commissioner PROUTY. So you make a blanket rate from Seattle to Portland?

Mr. MURRAY. Yes, sir.

Commissioner PROUTY. To all of those intermediate points?

Mr. MURRAY. Yes, sir.

Commissioner PROUTY. Does the Northern Pacific make that rate?

Mr. MURRAY. Yes, sir.

Commissioner PROUTY. Proceed now, Mr. Dillard.

Mr. DILLARD. Before we proceed to the others, I see I have omitted your Exhibit D.

Mr. MURRAY. I can give you those figures now, the total of the other exhibit.

Mr. DILLARD. Let us get this exhibit in first. What is your Exhibit D there?

Mr. MURRAY. Number of passengers carried and Union Pacific Road, passenger revenue derived from one way westbound passenger business, originating Denver, Cheyenne, and east thereof, destined to Puget Sound points, via Portland, routed via Union  
293 Pacific Railroad to Ogden or Granger, thence O. S. L. Railroad, and routed via Union Pacific Railroad to Denver and D. & R. G. Railroad, thence O. S. L. Railroad, separated as between the various passenger associations, for the years 1904 to 1908.

(Which said document so offered and received in evidence was marked "Murray Exhibit 10," being hereto attached and made a part hereof.)

Mr. DILLARD. That ought to have been introduced before; I thought it was. If your honor please, this will introduce many of the points of origin.

Commissioner PROUTY. Have you some statement that shows eastbound business?

Mr. DILLARD. Yes, sir; I am going to introduce that next. Mr. Murray, I see your Exhibit F I also overlooked introducing. State what that is.

Mr. MURRAY. A recapitulation by months for the years 1904 to 1908, inclusive, showing number of one-way passengers, and Oregon Short Line revenue on westbound passenger traffic, destined to Puget Sound points via Portland, originating in Western Passenger Association territory, routed via Ogden and Denver and Rio Grande Railroad and its connections, other than the Union Pacific Railroad Company.

(Which said documents so offered and received in evidence was marked "Murray Exhibit 11," being hereto attached and made a part hereof.)

Mr. DILLARD. We will take next, if your honor please, the eastbound business. What does your statement "I" show, Mr. Murray?

Mr. MURRAY. A statement of eastbound passenger traffic, originating at Puget Sound points and south thereof, north of Portland, and destined to points east of Cheyenne and Colorado common points.

Mr. DILLARD. For what years?

Mr. MURRAY. For the years 1904 to 1908, inclusive.

Mr. DILLARD. Give your footings there, Mr. Murray, so they may be read into the record. I don't mean to add the footing, but just give them separately.

Mr. MURRAY. Via Granger and Union Pacific Railroad, 8,820 passengers; via Ogden, D. & R. G. and U. P. R. R., 2,234; via Ogden, D. & R. G. and other connections, 1,546.

(Which said document so offered and received in evidence was marked "Murray Exhibit 12," and is hereto attached and made a part hereof.)

Mr. DILLARD. Have you a statement there that we have marked "J"?

Mr. MURRAY. Yes, sir.

Mr. DILLARD. What does that show?

Mr. MURRAY. Statement of eastbound passenger traffic originating at Puget Sound points, and south thereof, north of Portland, and destined to points east of Cheyenne and Colorado points; round trip business for the years 1904 to 1908, inclusive.

Mr. DILLARD. The statement just introduced was one-way business.

Mr. MURRAY. Yes, sir.

Mr. DILLARD. Now, give your footings, if you please, to the stenographer there.

Mr. MURRAY. Via Granger and U. P., 1,840; via Ogden, D. & R. G. and Union Pacific, 817; via Ogden, D. & R. G. and other connections, 481.

(Which said document so offered and received in evidence was marked "Murray Exhibit 13," and is hereto attached and made a part hereof.)

Mr. DILLARD. Have you a statement there marked "K"?

296 Mr. MURRAY. Yes, sir.

Mr. DILLARD. What is it, Mr. Murray?

Mr. MURRAY. Statement of tickets of foreign roads issued from points east of Colorado common points, destined to Puget Sound points and south thereof, north of Portland, on which stop-over privileges were obtained east of Portland, for the month of October, 1906.

Mr. DILLARD. You had time only to show this for one month, did you?

Mr. MURRAY. Yes, sir.

Mr. DILLARD. How is this arrived at, Mr. Murray?

Mr. MURRAY. This is taken from the tickets that appear in the collections, and taking the date of the issuance of the ticket and the date that the stop-over is given, or the date the ticket is endorsed for stop-over shows the number of stop-overs made during the month on these particular tickets.

Mr. DILLARD. In that time you found on first-class tickets how many stop-overs?

Mr. MURRAY. Three.

Mr. DILLARD. Second class how many?

Mr. MURRAY. None.

Mr. DILLARD. Third class how many?

297 Mr. MURRAY. Two hundred and fifty-eight.

Mr. DILLARD. Or rather colonists, as we mark it here. Round trip.

Mr. MURRAY. Two.

Mr. DILLARD. Total number of stop-overs then, in that month, were how many?

Mr. MURRAY. Two hundred and sixty-three.

Commissioner PROTBY. How do you account for the fact that your eastbound one-way business is so much lighter than your one-way westbound business?

Mr. MURRAY. Well, the territory up there is more sparsely settled than it is in the east.

Commissioner PROTBY. Do you mean by that that many more people go into that country than come out?

Mr. MURRAY. Yes, sir.

Mr. DILLARD. You did not have time to show the stop-overs for longer periods than you have them?

Mr. MURRAY. No, sir.

(Which said document so offered and received in evidence was marked "Murray Exhibit 14," and is hereto attached and made a part hereof.)

Mr. DILLARD. You stated that you had found your memorandum, Mr. Murray, which is based on the actual purchases of tickets warranted by exchange orders, what does that memorandum show?

Mr. MURRAY. Both east and west bound one way and round trip for the period 1904 to 1908, 49,422.

Commissioner PROUTY. That includes both east and west bound?

Mr. MURRAY. Yes, sir.

Commissioner PROUTY. That is the total number of tickets that you bought?

Mr. MURRAY. Yes, sir.

Mr. DILLARD. Have you any other things on that memorandum there?

Mr. MURRAY. Nothing more than calculations showing the number of passengers per day.

Commissioner PROUTY. How many was that?

Mr. DILLARD. What does that amount to, just as a matter of curiosity?

Mr. MURRAY. Twenty-seven passengers a day.

Commissioner PROUTY. Both ways?

Mr. MURRAY. Yes, sir; both ways.

Mr. DILLARD. Did you figure it out one way?

299 Mr. MURRAY. No; I did not.

Mr. DILLARD. Well, we can do that. Is there anything else in your direct examination that occurs to you that we have not gone over as far as you are concerned that you want to refer to?

Mr. MURRAY. Not unless you want those papers over there in connection with the tickets.

Mr. DILLARD. There might be some explanation of that. We all seemed to be a little confused this morning about the method in which the Northern Pacific originally sold round-trip tickets from Seattle and the method adopted now. How is that, Mr. Murray?

Mr. MURRAY. They have been selling tickets not only themselves, but the Great Northern and Canadian Pacific from Seattle east via their lines to St. Paul, Chicago, or other eastern destinations, returning through Missouri River, Huntington, and Portland, the ticket having attached to it a coupon covering the haul of the Northern Pacific from Portland to Seattle.

Mr. DILLARD. That has been abandoned since what time?

Mr. MURRAY. Since January 1st.

Mr. DILLARD. How were your regular divisions made on that for these tickets?

Mr. MURRAY. The Northern Pacific, in making their division, exacted from us out of our proportion from the Missouri River to Portland their local rate of \$6.20.

Mr. WOODWORTH. \$5.60, isn't it?

Mr. MURRAY. \$5.60, I should say.

Mr. DILLARD. I believe you can take the witness, Mr. Bunn.

Commissioner PROUTY. Would you expect, Mr. Murray, if a through route was named from eastern destinations, to pay any less to the Northern Pacific than their local rates from Portland up?

Mr. DILLARD. I will state very candidly that that will be satisfactory. I so understand that Mr. Lomax will be perfectly willing that they should take their full local out.

Commissioner PROUTY. Proceed now, Mr. Bunn.

Cross-examination:

Mr. BUNN. Mr. Murray, wouldn't you suppose it to be true that people who only desire to go to Portland would buy the ticket to Portland and your order for a ticket to Seattle?

301 Mr. MURRAY. I should not think so; no, sir.

Mr. BUNN. Why wouldn't they?

Mr. MURRAY. Because the ticket is only limited to continuous passage, and it would not do them any good to dispose of it; no scalpers up there.

Mr. BUNN. That is the usually ordinary card ticket, isn't it?

Mr. MURRAY. Ordinary card ticket limited to one day.

Mr. BUNN. Don't you think that the custom has prevailed of the Portland passengers getting those tickets to Seattle?

Mr. MURRAY. It might have occurred; I would not be able to say as to that. I would have to let Mr. McMurray state as to that, at the other end.

Mr. BUNN. You show, roughly speaking, fifteen times as many single-way tickets as round-trip tickets in these figures.

Mr. MURRAY. Yes, sir.

Mr. BUNN. Maybe only fourteen; I am not speaking accurately.

Mr. MURRAY. Yes, sir.

Mr. BUNN. Don't that surprise you a little?

Mr. MURRAY. No; not at all.

302 Mr. BUNN. Isn't it a lower rate that is in effect all the time for round-trip tickets than for double one-way tickets?

Mr. MURRAY. Yes; but the people that buy these second-class tickets are going out there with the idea of settling there or looking up a location.

Mr. BUNN. All the travel, such as occurred in Portland a year or two since, and is going to occur at Seattle this year, is round-trip business, isn't it?

Mr. MURRAY. It will be practically so; yes, sir.

Mr. BUNN. Practically so on a very much reduced ticket?

Mr. MURRAY. Yes.

Mr. BUNN. If you were told that the Northern Pacific figures show that not over thirty or forty per cent of this business is one-way business on their road, wouldn't it make you suspect that either your figures were wrong or that theirs were?

Mr. MURRAY. I do not think our figures could be wrong.

Mr. BUNN. You do not?

Mr. MURRAY. No, sir.

Mr. BUNN. You are thoroughly satisfied of that?

Mr. MURRAY. I am.

303 Mr. BUNN. Notwithstanding that all the time, the cheaper rates on round-trip tickets that you carry, still you carry something like fifteen times as many one-way passengers as round-trip passengers?

Mr. MURRAY. Yes, sir.

Mr. BUNN. That is all.

Commissioner PROT TY. One minute, Mr. Murray. Let me ask you a question: I suppose it appears probably on your memorandum. A man in Chicago desires to buy a ticket to Seattle. You sell him a ticket to Portland with an exchange order.

Mr. MURRAY. Yes, sir.

Commissioner PROT TY. Now, to just what does that exchange order entitle him?

Mr. MURRAY. It entitles him to a ticket to Seattle.

Commissioner PROT TY. Who buys him that ticket?

Mr. MURRAY. The ticket is presented at the depot and is taken care of by the O. R. & N.

Commissioner PROT TY. By your people there?

Mr. MURRAY. Yes.

Commissioner PROT TY. They buy him a ticket from the Northern Pacific?

Mr. MURRAY. Yes, sir.

304 Commissioner PROT TY. And present him the ticket?

Mr. MURRAY. Yes, sir.

Commissioner PROT TY. He can do anything with the ticket he wants to: it is his ticket?

Mr. MURRAY. Yes, sir.

Commissioner PROT TY. He can use it; he can, if the Northern Pacific saw fit, redeem it and get his money — it?

Mr. MURRAY. Yes, sir.

Commissioner PROT TY. Do you know whether in point of fact they would redeem a ticket which was not used within the day?

Mr. MURRAY. I couldn't say as to that. Perhaps Mr. McMurray could answer that question better than I could, being on the ground.

Commissioner PROT TY. Have your people ever investigated the matter to find out whether these tickets were honestly used, or whether these passengers did actually go through to Seattle?

Mr. MURRAY. No, sir.

Commissioner PROT TY. If a man has baggage to check through do you recheck his baggage for him?

Mr. MURRAY. That is done through our people in Portland.

Commissioner PROT TY. Do your people there keep any  
305 account of the number of instances in which they recheck baggage?

Mr. MURRAY. I think the Union Depot records would show that in Portland.

Commissioner PROUTY. You haven't any statement showing that?

Mr. MURRAY. No, I haven't any statement; maybe Mr. McMurray has it.

Commissioner PROUTY. That is all. Mr. Lossow, did you desire to ask any questions?

Mr. Lossow. No; I have no questions.

GEORGE BOOLE, called as a witness herein, having been first duly sworn, testified as follows:

Direct examination:

Mr. DILLARD. What is your name?

Mr. BOOLE. George Boole.

Mr. DILLARD. Where do you live?

Mr. BOOLE. I live in Seattle, Washington.

Mr. DILLARD. What is your business there?

Mr. BOOLE. Wholesale hardware.

306 Mr. DILLARD. You came to Chicago yesterday?

Mr. BOOLE. Sunday; yes, sir.

Mr. DILLARD. Where from?

Mr. BOOLE. From Detroit.

Mr. DILLARD. You just happened to be here, passing through?

Mr. BOOLE. Yes, sir.

Mr. DILLARD. How long have you lived at Seattle, Mr. Boole?

Mr. BOOLE. I have been in business there since 1899.

Mr. DILLARD. As a member of the traveling public, Mr. Boole, is it your opinion and judgment that the route via Portland should be so opened that you can purchase a through ticket to Portland, or to Seattle, rather, and also check baggage through? I call in that question for an opinion based upon the experience you have had in the past, showing why that route should or should not be opened.

Mr. BOOLE. As a convenience, it would seem to me that the route should be opened; that a person buying a ticket from Seattle to points east or south of Portland would be able to buy a direct ticket and check their baggage direct to the point of destination.

Mr. DILLARD. At present you can not do that?

Mr. BOOLE. You can check it only to Portland.

307 Mr. DILLARD. Do you go over the southern route—that is, over the Union Pacific route occasionally on your return home?

Mr. BOOLE. I have never gone West that way. I have come East that way several times.

Mr. DILLARD. Over the Union Pacific you have never gone West?

Mr. BOOLE. Never went West. I never happened to have wanted to go West that way.

Mr. DILLARD. Which road do you ordinarily take in going West?

Mr. BOOLE. In this instance I am going to California. I am going over the Santa Fe, but generally, as with all business men, our time

is short, and we go home the short way, either the Northern Pacific or the Great Northern.

Mr. DILLARD. You say you have come East through Portland from Seattle?

Mr. BOOLE. Yes, sir.

Mr. DILLARD. Have you experienced any inconveniences there by being unable to get a through ticket?

Mr. BOOLE. Nothing, except that I have had to purchase a ticket and recheck my baggage at Portland.

308 Mr. DILLARD. You are going to have a considerable exposition at your city this year, are you not?

Mr. BOOLE. We expect to; yes, sir.

Mr. DILLARD. Would it likely be to the advantage of the city and that exposition for this Portland gateway to be opened?

Mr. BOOLE. It would be better for anyone, especially those that are not experienced travelers, and a great many of those we expect to get; the easiest method of transportation is the best for them. Another thing, if you are coming through there and happen to forget your baggage in your hurry at Portland it would put you in a pretty bad way.

Mr. DILLARD. That is all.

Commissioner PROUTY. Is the change of roads at Portland made in the same depot?

Mr. BOOLE. Yes, sir.

Cross-examination:

Mr. BUNN. I suppose you agree with the last witness, that all this Seattle business will be done on round-trip tickets, anyway?

Mr. BOOLE. I didn't hear what the last witness had to say.

309 Mr. BUNN. You naturally think that would be the case, don't you?

Mr. BOOLE. Yes; it will be round-trip business, to a great extent.

Mr. BUNN. From your travel and experience, don't you think as to the large bulk of business that the road which is the shortest and quickest and which furnishes as good convenience as any other will take the bulk of this?

Mr. BOOLE. Well, for an excursion, the people that live in the East here want to travel to the West, and they want to take in the whole coast generally, to get what they can out of the trip. It is a vacation in a great many instances, and the different parts of the coast can be visited in a very short length of time, not much more than it would be to go direct to Seattle and back direct. Therefore you will find, I guess, that the people go out by the Great Northern and the Northern Pacific or the Canadian Pacific and come back over the Union Pacific, or go down to San Francisco, or continue clear to southern California and come in over the Santa Fe.

Mr. BUNN. That is all.

310 Redirect examination:

Mr. DILLARD. Much of that round-trip business would likely be the Union Pacific, O. S. L., and O. R. & N. one way, and down



through California the other way, would it not, if you had an open gateway there?

Mr. BOOLE. Yes; I think so.

(Witness excused.)

E. L. LOMAX, called as a witness herein, having been first duly sworn, testified as follows:

Direct examination:

Mr. DILLARD. Your name is E. L. LOMAX?

Mr. LOMAX. Yes, sir.

Mr. DILLARD. Your residence?

Mr. LOMAX. Omaha.

Mr. DILLARD. And your business is what?

Mr. LOMAX. General passenger agent of the Union Pacific Railroad.

Mr. DILLARD. How long have you been such?

Mr. LOMAX. Over twenty-one years.

311 Mr. DILLARD. How long have you been in touch with the Puget Sound business?

Mr. LOMAX. Ever since my connection with the Union Pacific began; over twenty-one years ago.

Mr. DILLARD. What efforts have you made in that time to obtain through routing and ticketing via Portland to Puget Sound points?

Mr. LOMAX. Repeated efforts; used every reasonable means we could to consummate the opening of the route.

Mr. DILLARD. Leaving out of consideration for the moment the desire of your railways to obtain what revenue it could, what induced you outside of that to make these efforts? What demand did you find for such route on the part of the public?

Mr. LOMAX. A constant and persistent demand on the part of the public, particularly in the East, and what you might call the center States, like Ohio, and Indiana and Illinois, Iowa, Missouri, Wisconsin, Minnesota, Kansas, and Nebraska.

Mr. DILLARD. What means did you adopt for satisfying that demand?

312 Mr. LOMAX. First, we asked for the opening of the route, and were not able to persuade the Northern Pacific to let us in there. At the time the first efforts were made there were only two railroads into Portland, the Northern Pacific and the Oregon Railroad & Navigation Company, with through connections from the East. Then there were other lines under construction, but for five or six years, to the best of my recollection, the two lines were the only ones there. Then, as these other roads came in, for instance, the Canadian Pacific, and then the Great Northern, and we saw arrangements made to give the public a route via these lines into Puget Sound points, we renewed our efforts to get the route opened up for us through Portland. I may say that probably more than a dozen different overtures were made as the situation was changed from time

to time by the building of new lines, we believing, from the demands made on us by the public for these tickets, that we had as good—that is, as reasonable and satisfactory—a route there as any of the lines, and for some reasons, better. One of the reasons we had for that belief was that our line, particularly in the early days, took in more business centers on its lines from the river to Puget Sound than did any other line, business centers which had more and direct communication with the eastern centers of the Atlantic seaboard as well as the Middle States. Our business under the most disadvantageous circumstances and one of the hardest handicaps that can be put on a passenger line, increased steadily from year to year, and while we were not successful in ticketing possibly more than one-third of the business that desired to go our way, that proportion constantly increased until I was satisfied, and I think my superior officers were, that we had an entirely reasonable and a most satisfactory route from the east to Puget Sound points.

313 Mr. DILLARD. Mr. Lomax, state some reasons that occur to you as to why the northern route would not be a reasonable route to certain passengers desiring to take the route over the U. P., O. S. & L., and O. R. & N., and so on?

Mr. LOMAX. I can not conceive why the Northern Pacific or any of the northern lines would be a reasonable route for a man in New York or Boston or Cleveland or Buffalo or any of the large eastern centers, who wanted to see the Middle West, who wanted to pass through Omaha or Kansas City, Denver, or Salt Lake City on one trip to the Puget Sound country. There are certain reasons why certain classes of people want to go that way, prefer to go that way.

The opening of the country, its settlement, the tracts the Government provide of irrigated land, and the mining interests, the manufacturing interests, and we have always contended that we have the best land, the richest land, and some of the largest mining sections along this road into Puget Sound points. Our commercial interests are very large.

Mr. DILLARD. Your tickets give stop-over privileges?

Mr. LOMAX. Yes, sir.

Mr. DILLARD. You sell colonists tickets, which give stop-over privileges within the limits of the tickets to people seeking new homes?

Mr. LOMAX. Yes, sir.

Mr. DILLARD. And whether there are greater or less advantages, certain advantages are offered to that character of passenger along the Union Pacific?

Mr. LOMAX. Yes, sir.

Mr. DILLARD. If they desire to seek a home somewhere along there, to prospect, and go on into Washington to prospect, the only reasonable route, I take it, would be the Union Pacific route?

Mr. LOMAX. Yes, sir.

315 Mr. DILLARD. Mr. Lomax, have you any map with you? Did you bring that map with you showing the plans of the Government now in effect and prospective with regard to opening new lines along that route?

Mr. LOMAX. Yes, sir.

Mr. DILLARD. State what that may indicate, Mr. LOMAX.

Mr. LOMAX. This map indicates the estimate of total acreage, both reclaimed and in process of reclamation, under investigation for reclamation by the United States Government and by private individuals.

Mr. DILLARD. Along what territory?

Mr. LOMAX. Along the line of the Union Pacific Railroad, Oregon Short Line, Oregon Railroad & Navigation Company; along the Union Pacific Railroad, Denver & Rio Grande through Utah; also from Ogden, the Southern Pacific through Nevada and California to Sacramento, and by the Southern Pacific to the northern part of California and the State of Oregon; all, so to speak, tributary to the line of the Union Pacific road.

Mr. DILLARD. Have you any figures there showing those amounts?

Mr. LOMAX. Yes, sir.

Mr. DILLARD. I wish you would read them into the record, 316 please.

Mr. LOMAX. The amount of acreage reclaimed—

Mr. DILLARD. Show where it is, if you have it there. I don't mean point it out, but state it if you can do so, so the stenographer can get it.

Mr. LOMAX. Minidoka, Idaho, about 134,000 acres. I would like to explain what the word "about" means. In getting the figures from the reclamation department, they only give the actual number of acres that have been put under water, but with each one of these reclaimed propositions there is an additional acreage which is either subsequently taken up by the United States Government or by private capital, and that is why this statement is made "about."

Mr. DILLARD. Proceed.

Mr. LOMAX. Minidoka, Idaho, Reservation	about	134,000 acres
Pathfinder Reserve, Wyoming	"	50,000 "
Wyo. & Neb., North Platte Reservation	"	96,000
Uncompahgre, Colorado	"	146,000
Truckee-Carson, Nevada	"	100,000

A total of	526,000 acres
reclaimed.	

317 Under process of reclamation:

Oregon & Colorado	about	165,000 acres
Payette Boise, Idaho & Oregon	"	132,000

A total of	297,000
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Under investigation for reclamation:

Pitt River, Cal	about	75,000 acres
Coppervale, Cal	"	30,000
Rumsey, Cal	"	30,000
Oregon Lines & Sp, Ore. & Cal	"	150,000
Umatilla, Ore	"	244,000

Carey act, Ia.....	about 280,000 acres
Strawberry Valley, Utah.....	" 60,000
Dubois, Utah.....	" 160,000
Bear Lake, Ida.....	" 75,000
Colo. River Storage & White River, Colo.....	" 175,000
Grand River, Colo.....	" 50,000
Humboldt, Nevada.....	" 160,000

A total of..... " 1489,000

Mr. DILLARD. Those lands are being opened to settlement?

Mr. LOMAX. A. Yes, sir.

Mr. DILLARD. In addition to those lines along the Union  
318 Pacific, O. S. L., and O. R. & N., so far as they lie along them  
or contiguous to them, are large numbers of acres of land sold  
from time to time by private individuals, are there not?

Mr. LOMAX. Yes, sir.

Mr. DILLARD. There is then a large movement to that western  
country of people seeking new homes?

Mr. LOMAX. Yes, sir.

Mr. DILLARD. Now, if the colonist is desirous of inspecting those  
lands contiguous to your line and passing on in his inspection up into  
Washington, into the Puget Sound country, for that purpose, would  
the northern route be a reasonable route for him?

Mr. LOMAX. No, sir.

Mr. DILLARD. That is all, I think, Mr. Lomax, unless there are  
some matters that occur to you which, if they are, the commissioner  
I am sure will be glad to get them.

Cross-examination:

Mr. BUNN. Mr. Lomax, you are endeavoring to the best of your  
ability to increase the revenue of the Union Pacific road by the set-  
tlement of these lands you talk about?

Mr. LOMAX. Yes, sir.

Mr. DILLARD. Mr. Bunn, wait one moment; there is one thing  
319 I have forgotten. I think it would be more satisfactory to  
bring it out now.

Mr. BUNN. Certainly.

Mr. DILLARD. Mr. Lomax, do you see any element of discrimina-  
tion against the lines with which you are connected in that the  
Northern Pacific grant the right to the Canadian Pacific to haul  
via Sumas and make connection with the Great Northern Railway  
for business from Seattle to Portland?

Mr. LOMAX. Yes, sir; I do.

Mr. DILLARD. Wherein does it occur to you as being discrimina-  
tory?

Mr. LOMAX. The Canadian Pacific is a parallel competing line  
with the Northern Pacific Railway all the way from St. Paul to  
Sumas Junction, yet the Northern Pacific in their conferences with  
us have stood on their rights, or individual right, not to open the

gateway and sacrifice their long haul for a short haul. But, with regard to the Canadian Pacific, they sacrificed that individual right. They allow the Canadian Pacific to ticket freely in both directions into and out of the Puget Sound country, and the haul to the Canadian Pacific from Seattle to Portland is exactly the same as it  
 320 is from Portland to Seattle. They permit the Great Northern to do the same thing. They permit the Southern Pacific coming in from the south from a certain district to do the same way, and the discrimination comes in in this way: They tell the Union Pacific that it cannot come in even on the same terms that the other lines come in. They say to the public, for instance, the man at Cincinnati or Buffalo or Pittsburgh: "You can go by way of St. Paul; you can go by way of Omaha and Billings; you can go by way of Cincinnati and New Orleans and El Paso, but you cannot go through Omaha and Kansas City and Denver and Salt Lake City to Puget Sound." Under the concurrences of the Northern Pacific Railroad on file, their interchange, we might say, is free; very free, so to speak, with these other lines; and in that respect I have always thought that the Union Pacific route was discriminated against as well as the public.

Mr. DILLARD. In your judgment, should the same rule apply to the establishment of a through route for passengers as apply to the establishment of a through route for freight?

Mr. LOMAX. No, sir.

Mr. DILLARD. Why not?

321 Mr. LOMAX. They are absolutely dissimilar.

Mr. BUNN. I do not know whether the commission wants to argue this case or not, now.

Commissioner PROTBY. That is perhaps very largely a matter of argument, and perhaps very largely for the commission finally, but I think he as a traffic man may state his opinion on that subject.

Mr. LOMAX. No, sir; there is a vast dissimilarity between passenger and freight business. They are two quantities that cannot be compared together. The passenger is what you might call alive and the freight is dead. There are certain reasons that would reasonably pertain to the shipment of freight that would not obtain with the traveling public, not in this country. Therefore, the rules that govern the shipping of freight and the rules that govern the handling of passengers must necessarily be very different; they cannot be handled on the same basis.

Mr. DILLARD. I this morning did not follow Mr. Woodworth right closely, but I thought in some of his illustrations there he was referring to the failure to make certain connections with various junction points with the Union Pacific in Nebraska as indicating a condition  
 similar to the position assumed by the Northern Pacific at

322 Portland. I am not absolutely sure; but, acting on that presumption, I will ask you, as a traffic man, whether you see any difference between an ordinary junction point and a gateway?

Mr. LOMAX. Yes, sir; very different.

Mr. DILLARD. What is it?

Mr. LOMAX. The rule with regard to mere junction points follows on these lines somewhat: At a junction point there are two, or maybe three, lines. The junction point is of no importance and has no particular standing commercially or otherwise, whereas a gateway is a point at which, we will say, three or four or five or more roads interchange their business: and, as a rule, where a point is of enough importance to have as many common carriers doing business through it as in that case, you find it a large city. For instance, we opened and have permitted our competitors to do business with us through what we consider our gateways, Omaha, Kansas City, Denver, Ogden, Salt Lake, and have been glad to accept from them the same division and agree with them on the same through rate as apply to our competitors who have through lines of their own. But that is a very different proposition from the custom prevailing among the lines not to  
323 interchange business at small junction points. For instance, we will take the Burlington business, the Rock Island business, the Missouri Pacific or Santa Fe business at Denver on exactly the same conditions that they can interchange with anybody else; but I would not want to take it at junction points in Kansas or Nebraska. There is a great difference there.

Mr. DILLARD. Mr. LOMAX, speaking of the Union Pacific, is there any recognized gateway at which you accept passenger business from certain roads and have refused other roads to receive it from them?

Mr. LOMAX. No, sir. When we have opened a gateway we have opened it to everybody.

Mr. DILLARD. While it is not your road, you may know something about it: I am free to confess I do not, and I want to give the commission all the light on it I can. Do you know anything about the Spokane situation which was referred to here?

Mr. LOMAX. Yes, sir.

Mr. DILLARD. What is that?

Mr. LOMAX. If I remember the Spokane situation correctly, it happened about the time that the Oregon Railway & Navigation Company were just passing out of the hands of a receiver and were  
324 becoming an independent line—independent I mean now of the Union Pacific or of the Northern Pacific—and they were casting around for traffic contracts to assist them in securing their share of the competitive business, and, to the best of my recollection, the Northern Pacific were asked, as well as the Great Northern, to make a contract for the Columbia River country, but the circumstances were somewhat different; the Northern Pacific paralleled the O. R. & N. very completely. There was hardly a town along the river on the O. R. & N. that was not also on the Northern Pacific, whereas the situation was very different with the Great Northern. They cut right across from Spokane to Seattle, and they were anxious to do some business into the upper part of Washington and Oregon, and I think they came out as far as Huntington. But as I have always understood it, the situation was so different that the Northern

Pacific did not care to make a contract at that time, although I believe that there is a junction point, Wallula Junction, where Portland has been opened to the Union Pacific ever since I have been on the road, if they wanted to use it.

Mr. DILLARD. To your knowledge, has there been any request of the Northern Pacific to open that Spokane gateway to passenger traffic that has been declined?

325 Mr. LOMAX. No, sir; not that I know of.

Mr. DILLARD. You do not know how that is?

Mr. LOMAX. No, sir.

Mr. DILLARD. Mr. Woodworth may know. Has there been any in recent years?

Mr. WOODWORTH. Yes.

Mr. BUNN. I don't see why we should go into that.

Mr. DILLARD. Well, never mind; I don't care to. We will let it pass. Take the witness.

Mr. BUNN. You are running your railroad so much in the interest of the public, sir, that I do not doubt that the Burlington can sell a through ticket to any point on the Union Pacific through Denver and you join them in that ticket?

Mr. LOMAX. Yes, sir.

Mr. BUNN. You do?

Mr. LOMAX. Yes, sir.

Mr. BUNN. Suppose Mr. Eustis wanted to sell a ticket from Denver to Rollins, or any other local point on the Union Pacific, Green River, do you mean to say there is a joint tariff?

Mr. LOMAX. No, sir; we would not join the Burlington in that.

326 Mr. BUNN. I thought not.

Mr. LOMAX. That is a different situation.

Mr. BUNN. That is a different situation?

Mr. LOMAX. Yes, sir.

Mr. BUNN. Well, you have explained it. Now, to go back, you are trying to settle this land you spoke of to the best of your ability?

Mr. LOMAX. Yes, sir.

Mr. BUNN. There is a good deal of the same kind of land along the Northern Pacific which I suppose you concede their right to settle to the very best of their ability?

Mr. LOMAX. Yes, sir.

Mr. BUNN. You do not assert any right on the part of the Union Pacific to have the Northern Pacific help settle your land, do you?

A. No right; no, sir.

Q. And you would not rest this case on any right that the Union Pacific had to get up to Puget Sound without building its own railway there, would you?

Mr. LOMAX. No, sir.

Mr. BUNN. You rest it entirely on the right of the public?

Mr. LOMAX. Yes, and no; I would answer that in this way: That as long as the Northern Pacific allowed the other lines to come

327 into Puget Sound on certain conditions and under certain arrangements they should allow the Union Pacific to come into the same country from the south.

Mr. BUNN. But for that question of discrimination which you have discussed, you rest this case on the public?

Mr. LOMAX. Outside of that, mainly on the public.

Mr. BUNN. You have been furnishing, however, a ticket to Puget Sound by way of Portland, have you not?

Mr. LOMAX. Not to Puget Sound; we have been furnishing a ticket to Portland and a side trip from Portland to Puget Sound.

Mr. BUNN. I say you have been furnishing the public a ticket from Portland to Puget Sound?

Mr. LOMAX. Yes; that is the effect of the two tickets.

Mr. BUNN. Therefore, the only real interest the public has in this question is the right to have its baggage checked through Portland.

Mr. LOMAX. And a through ticket.

Mr. BUNN. And a through ticket, which is no particular advantage, inasmuch as your agent in the Portland station hands over the rest of the ticket on arrival.

Mr. LOMAX. A very great advantage.

Mr. BUNN. Tell us what that is.

Mr. LOMAX. When you are undertaking to open a route to  
328 the public between certain given points, and you make a passenger get off his train and buy another piece of transportation in addition to the one he started his journey on, you handicap the route to such an extent, particularly with the part of the traveling public not so well posted in traveling, as to almost condemn it.

329 Mr. BUNN. You terminate in the same station in Portland where the Northern Pacific trains run out?

Mr. LOMAX. Yes, sir.

Mr. BUNN. And there is a lay over there of one or two hours in your station to go to the ticket office and go to the baggage room?

Mr. LOMAX. Yes, sir.

Mr. BUNN. And all reasonably intelligent travelers know enough to go to the ticket office and go to the baggage room, don't they? They have to do that where they start?

Mr. LOMAX. No, sir; I don't agree with you there.

Mr. BUNN. You don't agree with me?

Mr. LOMAX. The intelligent passenger wants to buy his ticket there and check his baggage through.

Mr. BUNN. Your company, Mr. Lomax, has been just as insistent on opening the particular gateway at Portland as the passenger, has it not?

Mr. LOMAX. That I cannot state.

Mr. BUNN. Don't you know that they even went so far as to bring a lawsuit in the Supreme Court of the United States, which was tried before Justice Field, to compel the Northern Pacific to open the so-called Portland gateway up to Puget Sound?



330 Mr. LOMAX. Yes, I have heard of it.

Mr. BUNN. And without extending or building up to Puget Sound from Portland your company has been constantly trying for twenty-five years to get up there with all the advantages of a railroad both as to passengers and freight, isn't that true?

Mr. LOMAX. Yes, sir, I guess it is, but I would like to supplement that just a minute.

Mr. BUNN. I don't object.

Mr. LOMAX. In regard to that case which I think you refer to, when it came up there were just the two roads in Portland. The Northern Pacific had then some individual rights which they had not sacrificed. The case was rather different from what it is now.

Mr. BUNN. That is all.

Redirect examination:

Mr. DILLARD. It is quite currently reported that some of the northern lines there, the Northern Pacific or possibly the Burlington, are endeavoring to break up this present practice, isn't it?

Mr. LOMAX. Yes, sir.

331 Mr. DILLARD. And their answer would so indicate. If they succeed in doing that and the route is not opened then you will have no way of ticketing through to Portland?

Mr. LOMAX. No, sir, we will not.

Mr. DILLARD. That is all.

Commissioner PROTBY. Do you know, Mr. LOMAX, about how many passengers you carry into Portland from Colorado common points and east?

Mr. LOMAX. Yes, sir, if you will just let me put that this way: The line of Cheyenne, Denver, Colorado common points and east thereof, I could not tell you what they did west but I can tell you east.

Commissioner PROTBY. Yes.

Mr. LOMAX. In five years, that is for the years 1904, 1905, 1906, 1907, and 1908, we carried westbound a few over 31,000 passengers.

Commissioner PROTBY. I am not talking now about the business that you carried through Portland to Puget Sound points, but about your total business into Portland. How many passengers do you carry into Portland over your line, whether they go through Portland or stop at Portland or go south of Portland?

332 Mr. LOMAX. No, sir, I haven't any data as to the Portland business proper, but I should judge that we would carry about fifty thousand or sixty thousand passengers a year out of Portland proper.

Commissioner PROTBY. Do you mean now merely into Portland or both into and out of Portland?

Mr. LOMAX. Both west and eastbound with Portland as the destination or starting point.

Commissioner PROTBY. What part of those would be westbound and what part eastbound?

Mr. LOMAX. As a rule the return business—not the return business, the business eastbound is about one-third of what it is westbound.

Commissioner PROUTY. That is to say, you sell about one-third as many eastbound tickets from Portland as you sell westbound tickets to Portland?

Mr. LOMAX. Yes, sir.

Commissioner PROUTY. At the present time, if a man wants to go to Seattle or to some Puget Sound point you sell him a Portland ticket with what you call a side trip?

Mr. LOMAX. Yes, sir.

Commissioner PROUTY. If the man stops at Portland you  
333 carry him to Portland for so much money?

Mr. LOMAX. Yes, sir.

Commissioner PROUTY. If he wants to go beyond Portland or if he says he wants to go beyond Portland, whether he does or not, you will give him an order which entitles him to his trip to Portland and to something else?

Mr. LOMAX. Yes, sir.

Commissioner PROUTY. Now, what is the reason that is not a discrimination against the man who stops at Portland?

Mr. LOMAX. Why, for the same reason that applies to all of the through rates, Mr. Commissioner. The rate to Seattle, to Tacoma, to Portland, to San Francisco, and to Los Angeles are the same. Therefore, the fact that the man going to Seattle goes there through Portland or goes direct does not cut very much ice. The rate is the same to all of those points. If that was a discrimination then the whole fabric of through rates to common points, passenger rates I mean now to common points, would be wrong. We would have to construct some other basis for making them if that consisted of discrimination.

Commissioner PROUTY. It might not be a discrimination to carry  
334 one man to Portland and to carry another man through Portland to Seattle, that is not the case I am putting to you at all. I want to go to Portland; Mr. Bunn wants to go to Portland; I say to you: "Give me a ticket to Seattle." You sell both of us for the same money a ticket?

Mr. LOMAX. Yes, sir.

Commissioner PROUTY. Mr. Bunn goes to Portland and stops there. I go to Portland and stop there. Mr. Bunn has nothing else and I have a ticket from Portland to Seattle, which I can do anything I have a mind to with. What is the reason that is not a discrimination in my favor?

Mr. LOMAX. Well, for the reason that asking for a ticket to Seattle and stopping in Portland you did not state your case right; you asked for a through ticket to Seattle, you gave that as your destination and according to our tariff—

Commissioner PROUTY. You haven't got any such thing as a through ticket to Seattle?

Mr. LOMAX. No, sir.

Commissioner PROUTY. You don't publish any such thing as a through rate to Seattle?

Mr. LOMAX. No, sir, we do not, but we are trying to arrange that and have been trying to arrange that on the side-trip basis.

335 Mr. BUNN. May I make a suggestion to the commissioner?

Commissioner PROUTY. Yes, sir.

Mr. BUNN. I am not opposed to this practice of theirs myself. What is the difference between the question the commissioner put and the case where we sell a man a ticket to Seattle and another man gets right on the same train with a ticket one hundred and eighty miles farther to Portland at the same price?

Commissioner PROUTY. Do I understand you to mean this: You sell at St. Paul two tickets, one to the man who goes to Seattle and the other to the man who goes through Seattle to Portland?

Mr. BUNN. Yes, sir, one hundred and eighty miles beyond.

Commissioner PROUTY. I understand that in your case you publish a rate to Seattle?

Mr. BUNN. We do.

Commissioner PROUTY. You publish another rate to Portland. Your rate to Portland meets the rate your competitor makes. You sell each man, one man a ticket to Seattle and another man a ticket to Portland. There is a discrimination in favor of the man who goes to

Portland, but it is not an undue discrimination because you  
336 are obliged to do that in order to meet the competition. Or, you have a through rate and the law says you may make that rate, and the commission holds that the discrimination is not undue. In this case they pass over to the man a ticket which is so much money practically, which he can take out into the street and sell for so much.

Mr. BUNN. I suppose a carrier may lawfully publish a rate beyond its own rails?

Commissioner PROUTY. I do not know that, Mr. Bunn. I do not believe that. It is very doubtful if it can. We have held in some instances it can not be done. Certainly it can not do that and make any discrimination up to the point where you leave your own rails.

Mr. DILLARD. The position we take is this, if your honor please: The point on which we base our fact that it is not a discrimination, that it is not unusual to sell side-trip tickets, that privilege is published in our tariff, that it is known to every person who purchases a ticket that he has the right to get the side-trip ticket and go to Seattle for just what the fare is to Portland. If he does not take  
337 advantage of that it is of his own will and there is no discrimination, because the privilege is open to the entire traveling public, like any other side trip.

Commissioner PROUTY. That is to say, you might publish a rate to Portland of fifty dollars from Chicago and state in your tariff that, if a man wanted to, when he got to Portland he could step in to your office and get five dollars; but if he did not want to he need not; it would be a privilege open to the entire public?

MR. DILLARD. No; I do not believe that would be a parallel case at all, because your honor's position as indicated would shut out entirely the question of the side trips. It is simply the equalizing of the rate to Portland and likewise up to Portland and *and* Seattle.

Commissioner PROTBY. I certainly think you should shut out the side trips, provided the ticket or coupons or whatever you give the man for his side trip can be made available by somebody else; it can be taken out into the market and sold for so much money. It does not seem to me that that is a proper thing. You should devise some means by which the man who buys that ticket has got to use it.

MR. DILLARD. If that be true, then it is the strongest argument that can possibly be put forward that this gateway ought to be opened.

338 Commissioner PROTBY. It either ought to be opened or it ought to be closed; it ought not to be so that one man can skin through it and the other man cannot.

MR. DILLARD. Certainly not; that is my own argument. I was going to say it certainly ought not to be closed.

Commissioner PROTBY. Have you ever investigated to know how many of these 49,000 tickets for which you paid the Northern Pacific in these five years were actually used by through-passengers?

MR. LOMAX. Yes, sir.

Commissioner PROTBY. What part of them were actually used by through-passengers, and what means did you take to ascertain?

MR. LOMAX. Why, at least ninety-eight per cent of them.

Commissioner PROTBY. When you buy this ticket in Portland for the through-passenger what do you do with the ticket?

MR. LOMAX. The ticket is given to the man; he buys a ticket that is good for the first train out. It is not good after that.

MR. BUNN. It is a special form of ticket.

MR. LOMAX. Sometimes that is two hours and fifty-five minutes, or, if the train is late and the connection is broken,  
339 it may be twelve hours; but there is always a train out within twelve hours, and beyond that limit the ticket is not good and cannot be used by anybody.

MR. BUNN. Isn't it good for twenty-four hours?

MR. LOMAX. No, sir; the first train. That is the way I understand it.

Commissioner PROTBY. Does the Northern Pacific redeem that ticket if it is not used?

MR. LOMAX. No, sir; that is, as far as I know. They have declined to make any redemption for us; whether they have for the public or not I do not know, but I rather think not.

Commissioner PROTBY. Well, then, of what great importance is it to you to have this route open? You advertise it, you work it, you sell tickets that way, the rechecking of the baggage there is done by your men, as I understand it; it is not necessarily done by the passenger. What is the reason you have not at the present time an available route yourself to Puget Sound points?

Mr. LOMAX. Because the handicap of not being able to check your baggage through and not being able to buy a through ticket simply puts you to the bad all the time with the through traveling public. A passenger wants to buy his ticket through, wants to check his baggage through, and when trains are a little behind, sometimes the connection narrows down to ten or fifteen or twenty minutes, and it is very difficult in a crowd, particularly in a union depot, to go up to the ticket window, present your order, get your ticket, and then go from the ticket window to the baggage room, which is sometimes maybe fifty to one hundred yards away, and get your baggage checked—that is, present your check and get another check for it to destination.

Commissioner PROTBY. Who presents this order at the ticket window?

Mr. LOMAX. The passenger.

Commissioner PROTBY. The passenger presents the order?

Mr. LOMAX. Yes, sir.

Commissioner PROTBY. By whom is the order signed? Is it signed by your agent or the Northern Pacific agent or a joint agent?

Mr. LOMAX. I will have to let Mr. McMurray answer that question; I think it is a union depot agent who is the representative of all the lines running into Portland.

Commissioner PROTBY. He issues the Northern Pacific ticket?

Mr. LOMAX. Yes, sir.

341 Commissioner PROTBY. And your company redeems that order as worth so much money?

Mr. LOMAX. Yes, sir; \$5.60.

(Witness excused.)

P. J. COLLINS, called as a witness herein, having been first duly sworn, testified as follows:

Direct examination:

Mr. DILLARD. You may state your name, please.

Mr. COLLINS. P. J. Collins.

Mr. DILLARD. Where do you reside, Mr. Collins?

Mr. COLLINS. Portland, Oregon.

Mr. DILLARD. What is your business?

Mr. COLLINS. Chief baggage clerk of the O. R. & N. Company.

Mr. DILLARD. How long have you been there?

Mr. COLLINS. Five and a half years handling that business.

Mr. DILLARD. You are familiar with the general method of handling passengers and baggage through Portland on the tickets such as have been referred to in the evidence, are you not?

342 Mr. COLLINS. Yes, sir.

Mr. DILLARD. Is there much trouble growing out of that method of handling passengers and baggage by reason of the passengers having to recheck their baggage at Portland?

Mr. COLLINS. Yes, sir, a great deal of it.

Mr. DILLARD. Explain in a very brief way to the commission how that is, Mr. Collins.

Mr. COLLINS. I will read some cases here that I have, some very bad cases of delays. Here is a case of some baggage checked from Clear Lake, Iowa, to Bellingham, which was delayed from January 16th—

Commissioner PROTBY. Now, wait a minute, Clear Lake, Iowa, to Bellingham; Bellingham is on the Northern Pacific?

Mr. COLLINS. Yes, sir.

Commissioner PROTBY. How can you check baggage from Clear Lake to Bellingham if there is no through route? Do you mean the passenger wanted to go from Clear Lake to Bellingham or that the baggage was checked from Clear Lake to Bellingham?

Mr. COLLINS. In this case, this was about pretty nearly a year ago this instance occurred, and it was checked clear through to destination.

Commissioner PROTBY. So you have checked through?

313 Mr. COLLINS. Yes, it was checked through to destination, but the checks were exchanged at the Portland depot just the same.

Commissioner PROTBY. Just explain what that process of checking from Clear Lake through to Bellingham consisted of? What did your agent at Clear Lake, Iowa, do?

Mr. COLLINS. He checked the baggage from Clear Lake to Bellingham. It was via the Burlington, D. R. & G., O. S. L., and O. R. & N., and Northern Pacific. The passengers on reaching Portland were furnished with tickets by the ticket agent at the union depot over the Northern Pacific reading to Bellingham.

Commissioner PROTBY. Yes.

Mr. COLLINS. The passengers failed to recheck their baggage.

Commissioner PROTBY. What have they got to recheck their baggage for if it is already checked?

Mr. COLLINS. It has got to be rechecked because the Northern Pacific won't accept checks to points on their lines coming in via Huntingdon.

Commissioner PROTBY. What do you mean by saying the baggage was checked through to Bellingham?

314 Mr. COLLINS. That was the destination appearing on the checks issued at Clear Lake.

Commissioner PROTBY. Did your people at Clear Lake instruct these passengers that their baggage had been checked through to Bellingham?

Mr. COLLINS. I couldn't say as to that. The instructions are they must notify people to recheck at Portland.

Commissioner PROTBY. Why don't you check the baggage to Portland then? Then the man knows he has got his baggage to look out for at Portland?

Mr. COLLINS. Yes, but under the present instructions to the lines now they only check to Portland.

Commissioner PROTBY. But at that time they used to check through?

Mr. COLLINS. They checked through, yes.

Commissioner PROTBY. Go on and tell us what happened in that case.

Mr. COLLINS. We had to write the passenger for additional information as to the form and numbers of tickets held, then we had to take the matter up with the assistant general passenger agent of the

Northern Pacific asking him to instruct the baggage agent at 345 Portland union depot to send the baggage forward.

Commissioner PROTBY. Did he forward it, did he finally do it?

Mr. COLLINS. They finally did it, yes, as soon as we advised them the form and numbers of their tickets, which were furnished and exchanged for the original ticket, that is, the Burlington tickets.

Commissioner PROTBY. I know, but how long was it before that passenger got his baggage at Bellingham?

Mr. COLLINS. February 11th, and he passed through Portland January 16th.

Commissioner PROTBY. When did the baggage reach Portland?

Mr. COLLINS. The baggage reached Portland the same time the passengers did.

Commissioner PROTBY. It lay, then, nearly a month?

Mr. COLLINS. Nearly a month, yes.

Mr. BUNN. Didn't this case arise while you were selling tickets through to Bellingham and the commission made you stop that?

Mr. COLLINS. How is that, Mr. Bunn?

Mr. BUNN. At the time this instance occurred weren't you selling tickets through to Bellingham, as well as checking 346 through?

Mr. COLLINS. Yes, that was along about a year ago.

Mr. BUNN. And that practice the commission told you to stop?

Commissioner PROTBY. He don't know anything about that, I expect. So that practically, you say, the tickets were sold through?

Mr. COLLINS. Yes.

Mr. BUNN. There was a time when they sold tickets reading through to Northern Pacific points, was there not?

Mr. COLLINS. Yes, reading through.

Mr. BUNN. And the commission thought that was improper because we had not concurred in the tariffs.

Commissioner PROTBY. They did not issue a coupon against your road, did they, or did they?

Mr. BUNN. Issued a through ticket reading to Bellingham and checked it through to Bellingham.

Commissioner PROTBY. I understand, but did your road accept the coupon?

Mr. BUNN. No, they exchanged those at Portland.

Mr. COLLINS. A regular exchange order drawn on the Northern Pacific.

347 Commissioner PROUTY. What is the difference between the present operation and that method?

Mr. BUNN. In result nothing, but in practice quite different, because now they sell the ticket to Portland and give the side trip to final destination.

Commissioner PROUTY. The man buys his ticket, goes to Portland and presents his exchange order and gets a ticket to Bellingham. Formerly he bought his ticket and went to Portland and went to the ticket office and got his ticket to Bellingham. What is the difference between those two conditions?

Mr. BUNN. The difference was this man was deceived by the form of his ticket and baggage check.

Commissioner PROUTY. That is to say, his ticket appeared to be a ticket to Bellingham?

Mr. DILLARD. His ticket appeared to be a ticket to Bellingham, and he thought it was until it was refused by the Northern Pacific, and the Northern Pacific would not honor it until there had been various correspondence showing what was the new ticket that was gotten over the Northern Pacific on it, whereon, being duly advised, it then honored the check, permitted the baggage to be rechecked, and the passenger meanwhile stayed three weeks without his

348 baggage. I think that is about the statement of the case.

Commissioner PROUTY. Well, now go ahead, Mr. Witness.

Mr. DILLARD. Before you go ahead with other cases, just leave that for the present and answer these questions: Under the present system is there much trouble or not on the part of passengers brought about by the fact that they can not check their baggage through?

Mr. COLLINS. Yes, sir; a great deal of trouble.

Mr. DILLARD. What does it consist in?

Mr. COLLINS. Well, a good many times the connections are close, people will get their order exchanged, but are unable to recheck their baggage. They get over to Sound points and take it up there. They take it up through the general agent, who takes it up with us and we have got to look up all this information before the Northern Pacific will accept the check and let the baggage go forward. We have got to give them the number of their tickets which were furnished on the original line, and in a good many cases people will say, "Well, my baggage was checked through," and you can not get them to understand that they must recheck it. A special case came under my observation the other day. I noticed a lady whom the  
349 depot ticket agent instructed to recheck her baggage, and asked her to do so, but she wouldn't do it, and so I called her attention to the matter and she said, "Go along, young man. I know my business. My baggage is checked through." She gets through to destination and writes us from there in reference to the matter, and the consequence was it was four or five days before she got her baggage. These other instances are the same kind.



Commissioner PROUTY. How often do these instances arise: are they of daily, weekly, or monthly occurrence, or how often is there trouble of that kind?

Mr. COLLINS. In the last six months it has probably been about ten or twelve times a week.

Commissioner PROUTY. Ten or twelve instances a week?

Mr. COLLINS. Yes.

Mr. DILLARD. After being wired, Mr. Collins, to come down, you were wired a few days ago and just got here?

Mr. COLLINS. Yes.

Mr. DILLARD. You were wired a few days ago to run through your files to see how many cases you could get in a certain time as shown by the correspondence?

Mr. COLLINS. Yes.

Mr. DILLARD. About how many did you find happening in a year as indicated by the correspondence?

Mr. COLLINS. I found eighty-three.

Mr. DILLARD. Eighty-three?

Mr. COLLINS. Yes, eighty-three.

Mr. DILLARD. Now, does the correspondence indicate all or even the major part, or is there even a greater number than that that is handled by means of telephone and telegraph?

Mr. COLLINS. Oh, yes; there are quite a good many more. I have no doubt there are many others in writing which I was unable to get hold of on account of lack of time. I only had about six hours to pick these out.

Mr. DILLARD. But you found eighty-three cases happening within a year?

Mr. COLLINS. Yes, sir.

Mr. DILLARD. And you think there are ten or twelve cases of that kind arising within a week?

Mr. COLLINS. Yes, there are.

Mr. DILLARD. Now, you have some typical cases there you might illustrate; you started out to do that, just a few of them.

Mr. COLLINS. I gave that one from Clear Lake. Here is a case from Brooklyn, New York, to Vancouver, B. C. The passengers got through Portland without rechecking and they left on the steamer for the Orient, and their baggage of course could not get up there in time and was held over for the next steamer. The agent there says they were very much put out on account of it. That is what it says in the telegram here. I am reading right from the telegram what he says. Here is another case, from Denver to Seattle; the passengers passed through Portland February 7th; that was a year ago, and the baggage did not go forward until the 13th, February 13th. And then there are about—oh, I guess about seventy-seven cases right in here where the baggage has been delayed three or four days right along.

Commissioner PROUTY. Well, now, when the baggage is delayed like that, what happens to you? Do they telegraph you or telephone you?

Mr. COLLINS. Yes; in the case of Seattle, there the general agent writes us and we take the matter up right away, go up to the auditor's office and try to get the exchanges. Lots of times it is difficult, on account of the fact that the tickets are exchanged between originating points and Portland, and we can not get the information from the passenger. Sometimes they get into the interior and the  
352 N. P.—before the N. P. will accept it and send the baggage on of course we have got to give them the number of the tickets.

Commissioner PROUTY. Is that all, Mr. Dillard?

Mr. DILLARD. Yes, if he is through.

Mr. BUNN. That is all.

(Witness excused.)

S. SEDWEEK, called as a witness herein, having been first duly sworn, testified as follows:

Direct examination:

Mr. DILLARD. Your name is Sedweek?

Mr. SEDWEEK. S. Sedweek; yes, sir.

Mr. DILLARD. Where do you live?

Mr. SEDWEEK. Kansas City.

Mr. DILLARD. What is your business?

Mr. SEDWEEK. Merchant, retail merchant.

Mr. DILLARD. Mr. Sedweek, have you at any time within the last year or few months had occasion to endeavor to secure a route for any organization out to Puget Sound point?

Mr. SEDWEEK. Yes, sir; I did last summer.

Mr. DILLARD. What organization was that?

353 Mr. SEDWEEK. Fraternal Order of Eagles.

Mr. DILLARD. How many did you have in your party?

Mr. SEDWEEK. About one hundred was all that went.

Mr. DILLARD. You desired to go as an organization to Puget Sound point?

Mr. SEDWEEK. We did, always do.

Mr. DILLARD. Sir?

Mr. SEDWEEK. We always do.

Mr. DILLARD. And did you try to secure any route, make up any route to go?

Mr. SEDWEEK. Yes, sir.

Mr. DILLARD. Which route did you determine upon?

Mr. SEDWEEK. Well, our transportation committee, that is our local transportation committee, wanted to figure to go out through Salt Lake and Portland and up that way.

Mr. DILLARD. It was the desire of your people to go that way?

Mr. SEDWEEK. Yes, sir.

Mr. DILLARD. How were you going to Portland?

Mr. SEDWEEK. The southern route coming back down from Frisco.

Mr. DILLARD. I don't understand you.

354 Mr. SEDWEEK. Coming back down through Frisco.

Mr. DILLARD. Down through what?

Mr. SEDWEEK. Through Frisco.

Mr. DILLARD. Oh, yes. What did you people want to go that way for?

Mr. SEDWEEK. Our committee in taking up the different routes, we generally like to go in a way where we can see the best scenery and what is to be seen on the route.

Mr. DILLARD. This was a pleasure trip, was it?

Mr. SEDWEEK. Pleasure trip, yes, sir.

Mr. DILLARD. You were going and you marked out your route where you thought you would be most pleased?

Mr. SEDWEEK. Most pleased and able to see the country.

Mr. DILLARD. Did you go that route?

Mr. SEDWEEK. No, sir.

Mr. DILLARD. Why not?

Mr. SEDWEEK. Well, we got shut out.

Mr. DILLARD. Shut out how, why, what way? Just explain.

Mr. SEDWEEK. There were two routes, if I may state it the way I would like to—

Mr. DILLARD. Just state it in your own way.

Mr. SEDWEEK. There were two roads figuring on the business  
355 and when the committee decided to take this route they refused to handle the train. That is, the Burlington was the one we were figuring with. We also had a special coach for the grand officers that went a week ahead, and they refused that first and we had to go the other way. We had to go over the Burlington up to Billings to the Northern Pacific, I believe they call it.

Mr. DILLARD. In other words, your train would not be handled if you went over the Union Pacific, they would not handle the train through Portland up to Puget Sound?

Mr. SEDWEEK. We were notified that they would not handle our train; they would handle it through Portland up, but it would cost us, I think it was, eleven dollars and some cents extra if we went over the Union Pacific to Portland. While, by going the other way, the committee figured it would kind of let them all in on it, and they figured to take the Union Pacific to Denver and the Burlington to Billings and then over the Northern Pacific. We practically closed a contract with the Union Pacific to that effect. Mr. Jones immediately, when he found out that the business was in that position,  
556 notified our committee that the company would not handle the train, would not take the train from him. Consequently we had to go over the Burlington and Northern Pacific.

Mr. DILLARD. Did that create any dissatisfaction on the part of those people?

Mr. SEDWEEK. It certainly did; it kept me to home.

Mr. DILLARD. Kept you to home? You did not go at all?

Mr. SEDWEEK. I did not.

Mr. DILLARD. Were there any expressions of dissatisfaction on the part of those who did go?

Mr. SEDWEEK. Quite a great deal.

Mr. DILLARD. That is all.

Cross-examination:

Mr. BUNN. Your party came back by Frisco, as they intended?

Mr. SEDWEEK. How is that?

Mr. BUNN. Your party came back by San Francisco, as they had planned?

Mr. SEDWEEK. Yes; some of them did.

Mr. BUNN. That is all.

(Witness excused.)

357 GEO. D. COTTON, called as a witness herein, having been first duly sworn, testified as follows:

Direct examination:

Mr. DILLARD. What is your name, please?

Mr. COTTON. Geo. D. Cotton.

Mr. DILLARD. Where do you live?

Mr. COTTON. Chicago.

Mr. DILLARD. What is your business?

Mr. COTTON. City passenger and ticket agent, Rock Island-Frisco lines.

Mr. DILLARD. How long have you been in your position?

Mr. COTTON. Well, it is four years in that position and ten years as ticket agent here in Chicago.

Mr. DILLARD. Mr. Cotton, do you sell tickets over any of these routes with which the Rock Island connects?

Mr. COTTON. Yes, sir.

Mr. DILLARD. Do you find any trouble, any expression of dissatisfaction, any loss of sales by your road to passengers by reason of the fact that the route through Portland and to Puget Sound points is not open?

358 Mr. COTTON. I do; yes, sir.

Mr. DILLARD. Just state exactly in your own way to the commission what are the troubles that appear in that way, brought about by that route not being opened.

Mr. COTTON. In the first place, probably nine-tenths or even ninety-five per cent of the inquiries we get the passenger specifies that he wants the Colorado and Salt Lake route, and inasmuch as our through tourist car route operates to Salt Lake City I suppose that would be one reason. But very often in talking with a passenger, or in fact in nearly all the cases, when they discover that they have to recheck their baggage at Portland, and that they have to exchange their ticket at that point, although they have specified that they wanted Colorado and Salt Lake City, they are in some instances so dissatisfied

that we lose the sale, and before we lose it we endeavor to secure it either through Omaha, which requires an additional change, or through St. Paul. But we very rarely, in fact not in one case in a hundred, secure the business by St. Paul in view of the fact that our line is the longest line by possibly two and a half to three hours difference in time.

359 Mr. DILLARD. And if they find then that they have to go through Omaha and recheck they will take some other line out of Chicago, will they?

Mr. COTTON. It would be natural that they would take a line that would give them the through car service which would obviate that extra change of cars at Council Bluffs, so that in either event we would lose that business.

Mr. DILLARD. Even of the number who do go on the Union Pacific route, after you have described to them the difficulties that they will have there, is there an expression of dissatisfaction or not?

Mr. COTTON. I would say that in every instance those who have never gone that way before express great dissatisfaction; and those who have gone that way very frequently comment on it.

Mr. DILLARD. On account of this trouble at Portland?

Mr. COTTON. On account of the trouble at Portland in rechecking and exchanging their ticket.

Mr. DILLARD. Mr. Cotton, out of your experience as a ticket man state what you would view as being a reasonable route for a passenger, and whether you would think that any route that was simply good enough for freight would be good enough for a passenger.

360 Mr. COTTON. From the expressions that I have heard from the passengers themselves it would seem to me that a reasonable route would be constituted in a line that not only got there within a reasonable time, not necessarily the quickest, and that offered reasonable equipment and service, but also a line that would take them through the territory they wanted to see and inspect. I have in view especially in our business second class, in our business, because we do not handle anyone first class on account of being the longer line. The principal points that are mentioned are Colorado and Salt Lake, and within the last year or two the Idaho country which has recently been opened up, the reclamation.

Mr. DILLARD. You say you have a large demand for tickets to and from that country?

Mr. COTTON. It is increasing.

Mr. DILLARD. It is increasing all the while?

Mr. COTTON. Yes; that is, the demand; the sale, of course, is different from the demand.

Mr. DILLARD. It cannot be reached, of course, by the present open route?

Mr. COTTON. No, sir.

361 Mr. DILLARD. And your judgment is that the route which would be reasonable for that character of passengers would be the one which would offer them the opportunity of going through this territory they desire to go through?

Mr. COTTON. Yes, sir.

Mr. DILLARD. That is all. Take the witness.

Commissioner PROUTY. Any inquiries, Mr. Bunn?

Mr. BUNN. No, I think not.

Commissioner PROUTY. Any inquiries, Mr. Lossow?

Mr. LOSSOW. No.

Commissioner PROUTY. That is all.

(Witness excused.)

W. M. STINDE, called as a witness herein, having been first duly sworn, testified as follows:

Direct examination:

Mr. DILLARD. State your name, please.

Mr. STINDE. W. M. Stinde.

Mr. DILLARD. Where do you live?

Mr. STINDE. St. Louis.

Mr. DILLARD. What is your business?

Mr. STINDE. City ticket agent for the Wabash Railroad.

362 Mr. DILLARD. Mr. Stinde, do you have much demand there for tickets via the Union Pacific, O. S. L., and O. R. & N., up to Seattle and Puget Sound points?

Mr. STINDE. We have a considerable demand; yes, sir.

Mr. DILLARD. Do you have any trouble in selling those tickets? If so, in what way?

Mr. STINDE. Why, there is always an objection to the exchange and the rechecking of baggage at Portland, as there is at any other place.

Mr. DILLARD. The passengers at St. Louis, after they are informed of the fact that they can take the Union Pacific route only by a repurchase of tickets and rechecking, do they sometimes change their route?

Mr. STINDE. It has been my experience that they have in quite a few cases.

Mr. DILLARD. Even when they do not change their route, is there any expression of dissatisfaction?

Mr. STINDE. Almost universally an expression of dissatisfaction.

Mr. DILLARD. You find, then, a considerable demand of people desiring to take that route, and a universal expression of dissatisfaction with the conditions surrounding it?

363 Mr. STINDE. There is a considerable demand and also an expression of dissatisfaction after they find out that they have to recheck and exchange their tickets at Portland.

Mr. DILLARD. That is all.

(Witness excused.)

C. L. GIBSON, called as a witness herein, having been first duly sworn, testified as follows:

Direct examination:

Mr. DILLARD. You may state your name, please.

Mr. GIBSON. C. L. Gibson.

Mr. DILLARD. Where do you reside, Mr. Gibson?

Mr. GIBSON. Cleveland.

Mr. DILLARD. What is your occupation?

Mr. GIBSON. Ticket agent, Union Passenger Station.

Mr. DILLARD. You have some demand there for tickets desiring to go to Puget Sound points?

Mr. GIBSON. Yes, sir.

Mr. DILLARD. When people learn the method of having to check baggage and repurchase tickets at Portland, does that meet their satisfaction or not, Mr. Gibson?

364 Mr. GIBSON. They are quite dissatisfied.

Mr. DILLARD. They are quite dissatisfied, you say?

Mr. GIBSON. Yes, sir.

Mr. DILLARD. Do you remember any particular case recently, that has just been recently called to your mind?

Mr. GIBSON. I had a case a short while ago; yes, sir.

Mr. DILLARD. What was it?

Mr. GIBSON. A gentleman appeared at the window and asked for a ticket to Seattle by way of Portland, by way of Denver and the Union Pacific and Oregon lines, and after explaining that he would not have a ticket reading from Portland to Seattle and baggage checked through, he refused to take anything at all.

Mr. DILLARD. You have been how long in the ticket business?

Mr. GIBSON. Twenty-three years almost.

Mr. DILLARD. Twenty-three years?

Mr. GIBSON. Yes, sir.

Mr. DILLARD. I wish you would let us have the benefit of your judgment as to what would be a reasonable route for passenger business and whether in your opinion a route that would be reasonable for freight business is equally reasonable for passenger business.

365 Mr. GIBSON. Well I should hardly like to speak of the two in connection at all.

Mr. DILLARD. Why not?

Mr. GIBSON. Well, a passenger, we go out and solicit business and hold our advertisements to secure the business and furnish nice equipment and through cars and buffet cars, lunch cars, cafe cars, every thing of that kind to enhance their trip, where freight is dumped into any old sort of a car almost and hauled through the country.

Mr. DILLARD. Then in putting all that advertising matter before the passenger you are appealing all the time to his esthetics, so to speak?

Mr. GIBSON. To a certain extent, we induce him to make the trip due to some famous scenery or features of the various lines through out this country.

Mr. DILLARD. Take the witness, Mr. Bond.

Mr. BOND. That is all.

(Witness excused.)

J. B. FRAWLEY, called as a witness herein, having been first duly sworn, testified as follows:

366 Direct examination:

Mr. DILLARD. State your name, please.

Mr. FRAWLEY. J. B. Frawley.

Mr. DILLARD. Where do you reside, Mr. Frawley?

Mr. FRAWLEY. Kansas City.

Mr. DILLARD. What is your business?

Mr. FRAWLEY. District passenger agent of the Union Pacific.

Mr. DILLARD. How long have you been connected with it?

Mr. FRAWLEY. I have been with the Union Pacific twenty-one years.

Mr. DILLARD. As district passenger agent, what is your position?

Mr. FRAWLEY. The solicitation of passenger business for the company.

Mr. DILLARD. In soliciting passenger business not only on your part, but all soliciting agents, what facts are put before the passengers, or proposed travelers?

Mr. FRAWLEY. We try to show them the advantages of our line as best we can.

Mr. DILLARD. Does there enter into that in any way the question of scenery in the way they go?

Mr. FRAWLEY. Very much so; yes, sir.

367 Mr. DILLARD. What effect do you find the nonopening of the Portland gateway, the fact that it is closed to passenger business, to have on passengers otherwise desiring to go by the Union Pacific through the Portland gateway?

Mr. FRAWLEY. Well we find it is very objectionable from the fact that they have to be delayed in Portland, and take the chance of meeting their connection there, not getting a through ticket and getting their baggage checked through, and it is particularly injurious to organization business, society business, clubs, and a through car party.

Mr. DILLARD. Do you find a pretty large demand for that kind of business you have just named, for the route through Portland? A desire to go that way if the gateway were open?

Mr. FRAWLEY. We have had considerable demand for it.

Mr. DILLARD. Did you have anything to do with the party that Mr. Sedweek testified about?

Mr. FRAWLEY. I had everything to do with it.

Mr. DILLARD. What was it? Just explain to the commission what happened there.

Mr. FRAWLEY. The committee came to us and asked us to look after a route for them, the transportation committee. We spent about  
368 probably six weeks or two months looking up facts, looking up the route by different lines. The committee after looking the matter over from all sides, first they wanted to go by way of Salt Lake through Portland; then finding the Portland gateway was closed they finally decided to go by Denver, Union Pacific to Denver.



and then Burlington and Northern Pacific, and that was closed against us in the way of through cars, so we had to abandon the business entirely.

Mr. DILLARD. Now, leaving out of consideration entirely for the moment any revenue that the lines with which you are connected might or might not realize from the opening of this gateway, do you, for people desiring to go the other way, that is over the Union Pacific, O. S. L., and O. R. & N., esteem the Northern Pacific a satisfactory or reasonable route?

Mr. FRAWLEY. I do not think it is as satisfactory as the Union Pacific.

Mr. DILLARD. Do you esteem it for that particular character of people a reasonable, or the reasonable route?

Mr. FRAWLEY. Well, I do not.

Mr. DILLARD. What do you understand to be a reasonable route for passenger traffic?

Mr. FRAWLEY. Why a route by which you can secure through tickets, check your baggage through, get good equipment, make 369 reasonably good time, and go through the section of the country in which you are most interested.

Mr. DILLARD. You think then that the personal element, as far as the passenger traffic is concerned, enters into the determination of what is a reasonable route?

Mr. FRAWLEY. I do.

Mr. DILLARD. Have you heard many complaints of the fact that baggage had to be rechecked at Portland?

Mr. FRAWLEY. I have.

Mr. DILLARD. And new tickets purchased there, on the part of people desiring to go that way?

Mr. FRAWLEY. I have, and in the way of women and children going alone, people sending families out there have objected to that part of it.

Mr. DILLARD. That is a pretty considerable complaint or just slight?

Mr. FRAWLEY. That is a considerable complaint, sir.

Mr. DILLARD. That is all.

Mr. BUNN. That is all.

Commissioner PROUTY. You are at the present time continually ticketing the people through Portland to points on the Northern Pacific?

370 Mr. FRAWLEY. I am not the ticket agent.

Commissioner PROUTY. Well, you are the supervisor of that ticket agent?

Mr. FRAWLEY. Yes, sir; trying to get the business.

Commissioner PROUTY. How many more people would you send through if you had the open route?

Mr. FRAWLEY. I should judge that, say, probably one-third of the people that I come in contact with.

Commissioner PROUTY. That is, you would send one-third more people through than you do now?

Mr. FRAWLEY. Fully one-third, or one-half, I would say.

Mr. DILLARD. If this Portland gateway were open and the business increased that way, it is a fact, as you know from your connection with these railroads, that even if one or two more daily trains were needed or demanded they would be put on?

Mr. FRAWLEY. Yes, sir.

Mr. DILLARD. The service would be made adequate to the demand?

Mr. FRAWLEY. Yes, sir.

(Witness excused.)

371 C. W. JONES, called as a witness herein, having been first duly sworn, testified as follows:

Direct examination:

Mr. DILLARD. Mr. Jones, where do you reside?

Mr. JONES. Kansas City.

Mr. DILLARD. What is your business?

Mr. JONES. City passenger and ticket agent of the Rock Island-Frisco Railroad.

Mr. DILLARD. Mr. Jones, please state to the commission as briefly as you can, yet at the same time as clearly and definitely as you can, any objections that you find on the part of the traveling public, if there be any, to the conditions now surrounding the route through the Union Pacific, O. S. L., and O. R. & N., and thence through Portland to Seattle, and what demand there is for that route. Just state in your own way and as quickly as possible.

Mr. JONES. Ticketing from Kansas City our gateway is Denver and Ogden to North Puget Sound points. We find that there is about ninety-nine per cent of the business going from that ter-

372 ritory to Seattle that wants to go through Colorado or Salt Lake City, and those we have sent out—quite a number of them—have complained on account of the trouble they have been put to at Portland. They said if they had known before they bought their ticket they should not have went that way. I have had cases also where I have ticketed the passenger where they have been purchased by the heads of the families and taken home and explained what they would have to do at Portland, and the folks refused to go that way. They brought the tickets back and was refunded and canceled the tickets.

Mr. DILLARD. Then at Kansas City you find a considerable demand for that route?

Mr. JONES. Of the Northern Puget Sound business, possibly ninety or ninety-five per cent.

Mr. DILLARD. And you find a considerable expression of dissatisfaction with the conditions that are necessitated by the fact that the Portland gateway is not open?

Mr. JONES. Yes, sir; as soon as they find what they have got to go through they object to it.

Mr. DILLARD. Take the witness, Mr. Bunn.

Mr. BUNN. That is all.

(Witness excused.)

373 FRED SCHWANECK, called as a witness herein, having been first duly sworn, testified as follows:

Direct examination:

Mr. DILLARD. What is your position?

Mr. SCHWANECK. Assistant ticket agent of the Missouri Pacific Railway, St. Louis.

Mr. DILLARD. You have heard the testimony of the gentlemen who were just on the stand and who preceded you?

Mr. SCHWANECK. Yes, sir.

Mr. DILLARD. I wish now, in your own way, you would state the conditions at St. Louis, whether there is any considerable demand for this route through Portland by our lines and whether any considerable complaint on the part of the traveling public of the conditions surrounding it?

Mr. SCHWANECK. Of course our line is really the only way we get business to Seattle is via Portland. Of course we can route business in connection with the Burlington from Kansas City via Billings, principally during the colony season we have a great deal

374 of business through Denver and Salt Lake City and Portland to Seattle. We of course have to issue an exchange order in connection with the ticket, which people as a rule do not like on account of the rechecking of baggage and exchanging of their ticket. It sometimes consumes a little time and sometimes they miss their connection and are laid over a day or until the next train.

Mr. DILLARD. That is the only route you say you can satisfactorily get through?

Mr. SCHWANECK. Well, not satisfactorily; of course we can route them either way, but people choosing our line would naturally go through the Portland gateway.

Mr. DILLARD. These people, do they give expression to their dissatisfaction?

Mr. SCHWANECK. Most everyone that buys a ticket through does not care very much about having to exchange their ticket or recheck their baggage.

Mr. DILLARD. That is all.

Cross-examination:

Mr. BUNN. People will come to you to travel over your line to go by way of Denver and naturally by way of Portland?

Mr. SCHWANECK. I say the majority of our business over our line is through the Portland gateway.

375 Mr. BUNN. Yet your line runs that way?

Mr. SCHWANECK. Runs that way, although we can ship them via Kansas City and Billings.

Mr. BUNN. The same way with the Frisco line?

Mr. SCHWANECK. The rates from St. Louis apply over all lines.

Mr. BUNN. The Frisco line runs out in your country towards Colorado?

Mr. SCHWANECK. You mean the St. Louis and San Francisco?

Mr. BUNN. Yes.

Mr. SCHWANECK. Well, they can route that way; yes, sir, they have the Rock Island and San Francisco line.

Mr. BUNN. Your Rock Island line to St. Paul?

Mr. SCHWANECK. Not to St. Paul, to Denver; they have the line to Denver also.

Mr. BUNN. The Rock Island line to St. Paul is an inferior line, isn't it, anyhow?

Mr. SCHWANECK. Oh yes.

Mr. BUNN. And so their agents and the agents of your company naturally canvas the business via Denver?

Mr. SCHWANECK. Yes, sir.

Mr. BUNN. That is all.

376 Redirect examination:

Mr. DILLARD. Then the only reasonable route for people on your line to take is through the Portland gateway?

Mr. SCHWANECK. Yes, sir.

Mr. DILLARD. They must take that I mean, to be the only reasonable route, and those people, then, are subject to these inconveniences by reason of the closing of the Portland gateway?

Mr. SCHWANECK. Yes; that is true.

Commissioner PROTBY. Now, a man comes into your office at St. Louis and wants to go to Seattle. Does he express any desire to go through Portland or does he simply want to get to Seattle?

Mr. SCHWANECK. Well, if they use our line—care to use our line——

Commissioner PROTBY. Whether they want to use your line—if they come into your office they want to use your line. A man comes into your office to get to Seattle.

Mr. SCHWANECK. Yes.

Commissioner PROTBY. You advertise to ticket people to Seattle, don't you, to Puget Sound points?

377 Mr. SCHWANECK. Yes; the coast.

Commissioner PROTBY. Well, a man comes into your office and he wants a ticket to Seattle.

Mr. SCHWANECK. Yes.

Commissioner PROTBY. Does he tell you how he wants to go? Does he tell you he wants to go by way of Portland or Salt Lake City?

Mr. SCHWANECK. Usually a man tells us which way he wants to go; sometimes they do not.

Commissioner PROTBY. Do you sometimes tell him which way he wants to go?

Mr. SCHWANECK. We try to get the long haul, of course.

Commissioner PROUTY. You try to get the long haul for your roads?

Mr. SCHWANECK. Yes, sir.

Commissioner PROUTY. If you were to say to that man: "You can go to Kansas City and take a through car there by the Burlington," in nine cases out of ten, would the passenger object to doing that if you told him that was the proper way to go?

Mr. SCHWANECK. Well, I don't know that he would object.

Commissioner PROUTY. You would object because you want  
378 to carry him, of course, out into Colorado, but would he object if you told him that was the way?

Mr. SCHWANECK. Possibly not, but business originating over our line, the people usually have their minds made up to go through Colorado.

Commissioner PROUTY. That is all.

(Witness excused.)

J. R. SHERWIN, called as a witness herein, having been first duly sworn, testified as follows:

Direct examination:

Mr. DILLARD. Where do you live, Mr. Sherwin?

Mr. SHERWIN. Kansas City.

Mr. DILLARD. What is your business?

Mr. SHERWIN. Passenger and ticket agent of the Missouri Pacific Railway Company.

Mr. DILLARD. Wait a moment; let me make this statement so that if it is satisfactory to Mr. Bunn I possibly can shorten this matter  
379 very much. I have here several gentlemen whose names I will call, if the statement is agreeable to him, as to what they will testify. They would testify that at their respective stations there is a demand, some of them a considerable demand, some of them a large demand, for tickets to Puget Sound points via the Portland gateway and Union Pacific, O. S. L., and O. R. & N. That in instances when they learn the only method by which they can secure the tickets there, that they decline to go that route and take the northern route instead; that in other instances they still follow the route notwithstanding the fact that they have to recheck baggage and repurchase tickets at Portland, but that in many cases there are complaints against having to do that, and an expression of dissatisfaction. Now, I have several witnesses here who will state that.

Mr. BUNN. I would rather take the statement of the witnesses than your statement. Wouldn't it be entirely satisfactory if we put it this way: That some number of witnesses, and you can give their names, from such and such points will testify substantially as the ticket agents who have been sworn already.

Mr. DILLARD. I don't know, I have been very short on that  
380 examination.

Mr. BUNN. Testify substantially from their points as these men have testified from theirs.

Commissioner PROTBY. I think we must assume in this case, gentlemen, and there can be no doubt of it, that some people desiring to go from eastern points to Puget Sound points would prefer for various reasons to go through Portland. There is no question about that. It seems to be conceded that the present system of working business through Portland imposes a certain hardship upon the traveling public. It is an inconvenience to be obliged to repurchase a ticket at Portland; it is an inconvenience to be obliged to recheck your baggage at Portland, and in my own view of the matter, if there should be any through route, there ought to be a through route and not a substitute for a through route. But, at any rate, it must be conceded that the present system imposes a burden upon the public. The only doubtful fact seems to be the extent of a demand for a through route by way of Portland. One witness has said that ninety-five per cent of all the passenger traffic from Kansas City desired to go through Colorado via Salt Lake City, and so through the  
 381 Portland gateway. Now, Mr. Dillard, if you have testimony tending to show the extent of this demand it would add something to your case; but I do not think it adds anything to your case to simply call ticket agent after ticket agent and show these facts about which there cannot be any dispute.

Mr. BUNN. We, personally, as I have just told Mr. Dillard, will not call anybody attempting to contradict his ticket agents.

Commissioner PROTBY. If you have any means by which you can show more fully than you have already showed the extent of the desire on the part of the traveling public to go via Portland, it seems to me it would be well to call those witnesses; but I hardly think it is worth while to take up time to prove these matters about which there can be no dispute.

Mr. LOSSOW. I think perhaps at this point it would be well to introduce these petitions which came to the commission, to the chief clerk, from Kansas City, asking the commission to establish a through route via the Portland gateway.

Commissioner PROTBY. What are they, Mr. Lossow?

Mr. LOSSOW. They are four petitions which came into the hands of the Interstate Commerce Commission; one is from the Kansas  
 382 City Live Stock Exchange, asking for the establishment of a through route via Portland, and here is a petition received from the Kansas City Fruit Exchange, and one from the Kansas City Commercial Club, and then there is one from the professional and commercial interests of Kansas City.

Mr. BUNN. If Mr. Dillard will concede that the Union Pacific agents at these points solicited the forwarding of these petitions —

Commissioner PROTBY. It may be the result of the excursion that did not go.

Mr. DILLARD. I do not know, but if it is a fact I will very readily concede it.

Commissioner PROUTY. Did any letter accompany these petitions?

Mr. LOSSOW. There was no letter of transmittal as far as I could find; the chief clerk looked that up for me and as far as he could find there was no letter of transmittal. Of course we may be able to find later such a letter.

Commissioner PROUTY. Mr. Dillard, ascertain if any of you gentlemen know anything about this.

Mr. DILLARD. Mr. Kaill, were these petitions circulated by any of our people or by the people in town?

Mr. KAILL. The petitions you are referring to?

383 Mr. DILLARD. Yes.

Mr. KAILL. They were circulated by the people themselves.

Commissioner PROUTY. How did the people happen to circulate these petitions?

Mr. KAILL. From the requests that have been made from time to time as to the opening of the Portland gateway.

Commissioner PROUTY. Who suggested that it would be a good thing to have the petitions? Did you suggest that?

Mr. KAILL. Yes, sir.

Mr. DILLARD. When you suggested that, did you find any objections to circulating it?

Mr. KAILL. None whatever.

Mr. DILLARD. Did you find a general idea on the part of the people that the gateway should be opened?

Mr. KAILL. Yes, sir; most emphatically.

Mr. DILLARD. And they very gladly took hold of it when you suggested it and circulated the petitions?

Mr. KAILL. Yes, sir.

Commissioner PROUTY. Well, I think those petitions may be put into the record. They are not probably of very great importance.

384 It seems to me we must all concede that many people might desire to take this route in going to Puget Sound point. A man who has been there once by the other road might like to go the second time by this route. There are various objects of interest on the way; there are various business interests which might induce a man to desire to take that route. If you have any evidence, Mr. Dillard, as to the extent to which that desire prevails, your might introduce that. You have already shown the number of passengers who have actually gone by this route, and your witness has testified that he could have increased that number from Kansas City territory by a third or a half but for these limitations on the route. Now, if you have any more evidence of that sort, it seems to me it is pertinent, but it is hardly worth while to call station agents to simply show that now and then a man comes to their depot and asks for a ticket to Seattle via the Portland gateway.

Mr. DILLARD. If your honor please, I did not call the agent to show that now and then a purchaser comes to the window.

Commissioner PROUTY. In substance that is what it amounts to, and that is what most of them testify; but you can take your own

course, Mr. Dillard. We will hear the rest of these station agents if you desire.

Mr. DILLARD. I will confine it as closely as I can to your  
385 honor's ruling.

(Which said documents last above referred to were marked, respectively, "I. C. C. Exhibits 1, 2, 3, and 4," and are hereto attached and made a part hereof.)

Commissioner PROUTY. How many more witnesses have you, Mr. Dillard?

Mr. DILLARD. I have eight or ten.

Commissioner PROUTY. I think we will take a recess until ten o'clock to-morrow morning.

Whereupon a recess was taken until Thursday, February 18th, 1909, at ten o'clock a. m.

386 THURSDAY, FEBRUARY 18TH, 1909—10:00 O'CLOCK A. M.

The commission met pursuant to adjournment.

Present as before.

Commissioner PROUTY. You may proceed, Mr. Dillard.

J. G. RODGERS, called as a witness herein, having been first duly sworn, testified as follows:

Direct examination:

Mr. DILLARD. State your name, please.

Mr. RODGERS. J. G. Rodgers.

Mr. DILLARD. Your business?

Mr. RODGERS. Ticket seller, Chicago & Alton, St. Louis, Missouri.

Mr. DILLARD. Mr. Rodgers, of people who come to your office requesting tickets for sale to Puget Sound points, about what percentage in your judgment request tickets through the Union Pacific line and via Portland to those points?

Mr. RODGERS. Our records will indicate what we sell to two-thirds, and the inquiries will run about the same.

387 Commissioner PROUTY. I was thinking of something else,

Mr. Dillard, and did not catch where this gentleman was located.

Mr. RODGERS. At St. Louis.

Mr. DILLARD. He is the ticket agent of the C. & A., at St. Louis.

Commissioner PROUTY. Yes.

Mr. DILLARD. When those persons requesting tickets over the Union Pacific and connecting lines find that there is trouble in having to repurchase at Portland other tickets and recheck their baggage, is there much expression of dissatisfaction?

Mr. RODGERS. That phase don't come up until the last, you know; absolutely last. A man asks for a ticket to Seattle over our line, which is to Kansas City and some connecting line beyond, and there is no mention made of the exchange order until the last minute or until we get his money, and then we explain to him what procedure he has got to go through at Portland.



Commissioner PROTBY. Now, why do you prefer to work business by Portland rather than by Billings?

Mr. RODGERS. We do not.

Commissioner PROTBY. What do you say to a man when he  
388 wants a ticket to Seattle?

Mr. RODGERS. "How do you want to go beyond Kansas City?"

Commissioner PROTBY. Does he ask you how he can go?

Mr. RODGERS. Yes; sometimes; and we will ask him what towns he might want to go through.

Commissioner PROTBY. But you don't explain to him the difficulties of rechecking his baggage at Portland until he has made up his mind to go that way?

Mr. RODGERS. No, sir; we might lose the business.

Commissioner PROTBY. It don't make any difference to you whether you lose the business or not; you would send him the other way if you didn't send him that way?

Mr. RODGERS. We can; yes, sir.

Commissioner PROTBY. Do you find any cases where he insists on going by way of Portland or not at all?

Mr. RODGERS. No; I have not found any case where we have lost any business on this exchange order proposition at Portland.

Commissioner PROTBY. Suppose there were a through route via Portland and you could sell a straight ticket through, would you work  
any more business through Portland than you do now?

389 Mr. RODGERS. No, sir.

Commissioner PROTBY. You send every man that way now that wants to go, don't you?

Mr. RODGERS. Beyond Kansas City we ask the passenger how he wants to go.

Commissioner PROTBY. I understand, but if he wants to go through Portland you send him that way?

Mr. RODGERS. Yes.

Commissioner PROTBY. Have you ever known anybody to decline to go that way and go the other way because he had to recheck his baggage at Portland?

Mr. RODGERS. No.

Commissioner PROTBY. Proceed, Mr. Dillard.

Mr. DILLARD. When these passengers come in requesting tickets, you say the majority, I forget the exact percentage you have, request tickets over the Union Pacific. The point I want *I want* distinctly brought out is, do they come in making that request voluntarily, not simply induced to it by you?

Mr. RODGERS. The passenger walks into our office and asks for the rates first to Seattle or some other point up there, and we quote them offhand. Then he will ask you how you go, and we tell him we  
390 take him to Kansas City and a line from there. We ask him what towns he wants to go through. Of course if he expresses Denver, Ogden, and that way, it is necessarily over the Union Pacific

and Rock Island and Burlington and Missouri Pacific to Denver, and then Union Pacific in connection beyond, and the D. & R. G.

Mr. DILLARD. The point I specifically want, Mr. Rodgers, is this: Do they request that routing through Portland or name through Denver or Salt Lake City of their own voluntary motion desiring to go that way?

Mr. RODGERS. Yes, sir.

Mr. DILLARD. That is all.

Cross-examination:

Mr. BUNN. It doesn't make any difference to you at all which way you route them does it; you have no interest in the matter?

Mr. RODGERS. No, sir; we get the pro rata.

Mr. BUNN. You get the same revenue anyway?

Mr. RODGERS. We get the haul up to Kansas City and beyond that it is prorated out to the different lines.

Mr. BUNN. You have no rails beyond Kansas City?

Mr. RODGERS. No, sir.

391 Commissioner PROUTY. Do you operate any equipment beyond Kansas City or do you operate from St. Louis any equipment which goes beyond Kansas City on your trains?

Mr. RODGERS. No, sir; our equipment merely runs from St. Louis to Kansas City, and at Kansas City they change him to some other railroad.

Commissioner PROUTY. In all cases?

Mr. RODGERS. Yes, sir; to those points.

Commissioner PROUTY. That is all.

(Witness excused.)

JOHN B. DE FRIEST, called as a witness herein, having been first duly sworn, testified as follows:

Direct examination:

Mr. DILLARD. State your name, please.

Mr. DE FRIEST. John B. de Friest.

Mr. DILLARD. What is your business?

Mr. DE FRIEST. General eastern agent of the Union Pacific Railroad.

Mr. DILLARD. At what place?

Mr. DE FRIEST. New York.

392 Mr. DILLARD. In your office there you attend to the routing of people and give all information as to tickets to Puget Sound points?

Mr. DE FRIEST. Yes, sir.

Mr. DILLARD. Is there an inquiry in your office for tickets over the Union Pacific route?

Mr. DE FRIEST. Yes, sir.

Mr. DILLARD. Most of the people who would come to your office would naturally want to go over that route, would they not?

Mr. DE FRIEST. Undoubtedly; yes, sir.

Mr. DILLARD. Sir?

Mr. DE FRIEST. Yes, sir.

Mr. DILLARD. And in your office about what percentage is there of inquiry for that particular route, you being the Union Pacific office?

Mr. DE FRIEST. Between seventy-five and eighty per cent.

Mr. DILLARD. When those people come in making such inquiries, and find out the trouble surrounding that by reason of repurchasing of ticket and rechecking of baggage at Portland, is there any expression of dissatisfaction?

Mr. DE FRIEST. Considerable.

393 Mr. DILLARD. Do you find any loss of business on that account?

Mr. DE FRIEST. Yes, sir.

Mr. DILLARD. Just explain to the commissioner about how that works, about where the passengers go.

Mr. DE FRIEST. They come into the office and get the information with reference to the trains, service, and so forth, and after we give them all the information necessary, when it comes down to talking the ticket, about purchasing the ticket, we always explain before we go out after the ticket that we will furnish them with a ticket to Portland and the ticket will be endorsed to be exchanged on the road, on the O. R. & N. Company for a ticket reading from Portland up to Seattle, and that the baggage will be rechecked at Portland, tell them it will be done by the union depot man, the union depot passenger agent there, and they will absolutely have no trouble, but just as soon as we mention that fact to them then they commence to mistrust there is something wrong; they think it is very funny they can not get a ticket through, and very often they will decline to buy and go out of the office.

Mr. DILLARD. I think that is all.

394 Cross-examination:

Mr. BUNN. Your company has advertised a through line to Seattle a good while, hasn't it?

Mr. DE FRIEST. We advertise through tickets; that is, we advertise through rate, but we advertise our Portland line only and north Pacific coast points.

Mr. BUNN. You advertise tickets to Seattle?

Mr. DE FRIEST. To north Pacific points, the north Pacific coast points.

395 Mr. BUNN. You have taken a good deal of pains for years to advertise that country?

Mr. DE FRIEST. Yes, sir; that is what brings people in, that walk along Broadway.

Mr. BUNN. That effort of your own has a great deal to do with creating this demand, hasn't it?

Mr. DE FRIEST. Some of it; yes, sir.

Mr. BUNN. That is all.

Commissioner FROST. One minute, Mr. Dillard. Mr. De Friest says he tells a man, or a prospective customer that his ticket will be

changed on the train, and that his baggage will be rechecked for him by somebody at Portland. Now, the testimony of some of your witnesses yesterday was that the passenger was obliged to present the exchange order himself at the ticket office in Portland, and was obliged to attend to the rechecking of the baggage himself. I think that point should be made clear by some witness.

Mr. DILLARD. Yes, sir, I thought this morning I would introduce on that the circulars or rules which govern it. I will call the witnesses back so that that will be perfectly clear.

Commissioner PROUTY. That would be perhaps more to the point, if you were to introduce some one from Portland who knows exactly what is done.

Mr. DILLARD. Yes, sir; I mean in connection with a witness.

Commissioner PROUTY. That is all, Mr. De Friest.

(Witness excused.)

Mr. DILLARD. Mr. Kaill, please take the witness stand.

H. G. KAILL, called as a witness herein, having been first duly sworn, testified as follows:

Direct examination:

Mr. DILLARD. Where do you live?

Mr. KAILL. Kansas City.

Mr. DILLARD. What is your business?

Mr. KAILL. Assistant general freight and passenger agent of the Union Pacific Railroad.

Mr. DILLARD. You have general supervision, then, over the passenger business at Kansas City?

Mr. KAILL. Yes, sir.

Mr. DILLARD. Mr. Kaill, does the fact that passengers have these troubles at Portland influence people to any extent who wish to go that way, to change their route?

Mr. KAILL. Yes, sir.

Mr. DILLARD. You don't know the percentage of tickets that are requested over the various roads there of the United States, do you?

Mr. KAILL. No, I do not, Mr. Dillard.

Mr. DILLARD. That is all.

(Witness excused.)

J. R. SHERWIN, heretofore called as a witness herein, resumed the stand, and further testified, as follows:

Direct examination:

Mr. DILLARD. What is your full name?

Mr. SHERWIN. J. R. Sherwin.

Mr. DILLARD. Your residence?

Mr. SHERWIN. Kansas City.

Mr. DILLARD. Your business?

Mr. SHERWIN. Passenger and ticket agent for the Missouri Pacific Railway.

398 Mr. DILLARD. About what percentage in your judgment of passengers desiring to go to Puget Sound points request tickets over the Union Pacific route?

Mr. SHERWIN. In our office?

Mr. DILLARD. Yes, sir.

Mr. SHERWIN. From 60 to 75 per cent.

Mr. DILLARD. Does it happen or not at times when they find that they must recheck baggage, repurchase tickets at Portland, by virtue of this exchange order, that they change their route?

Mr. SHERWIN. Yes, sir; it does.

Mr. DILLARD. Even when they continue on that route and find those conditions, do they express dissatisfaction or not?

Mr. SHERWIN. Almost invariably they do; yes, sir.

Mr. DILLARD. That is all.

Cross-examination:

Mr. BUNN. The Missouri Pacific runs from Kansas City west?

Mr. SHERWIN. Yes, sir.

Mr. BUNN. To Colorado points and other points?

Mr. SHERWIN. Yes.

399 Mr. BUNN. If a man wanted to go to Seattle via the Burlington and the Northern route, he would not have to come near your office at all, would he?

Mr. SHERWIN. He might do so, because we can sell via Denver and the Burlington at Billings.

Mr. BUNN. It would not be the natural place to come, would it?

Mr. SHERWIN. No, sir.

Mr. BUNN. And your interest is all concerning Colorado, so you would sell him that ticket if possible?

Mr. SHERWIN. Yes.

Mr. BUNN. That is all.

(Witness excused.)

J. G. LOWE, called as a witness herein, having been first duly sworn, testified as follows:

Direct examination:

Mr. DILLARD. State your name, please.

Mr. LOWE. J. G. Lowe.

Mr. DILLARD. Where do you live?

Mr. LOWE. St. Louis.

400 Mr. DILLARD. Your business?

Mr. LOWE. General agent, Union Pacific.

Mr. DILLARD. You have charge of the matter, as far as the Union Pacific is concerned, of people who wish to go to Puget Sound points, have you?

Mr. LOWE. Yes, sir.

Mr. DILLARD. Mr. Lowe, do you find that the fact that passengers seeking that route have to purchase tickets and recheck baggage at Portland causes any of them to change their route?

Mr. LOWE. Yes, sir.

Mr. DILLARD. Even when they go that route, do they express dissatisfaction?

Mr. LOWE. Yes, sir; it is objectionable, the rechecking of their baggage and getting a new ticket.

Mr. DILLARD. That is all.

Mr. BUNN. That is all.

Commissioner PROUTY. Over what line do you route passengers from St. Louis?

Mr. LOWE. We work with all lines out of St. Louis.

Commissioner PROUTY. Is there any through car operated from St. Louis to Portland?

401 Mr. LOWE. Over the Union Pacific?

Commissioner PROUTY. Over the Union Pacific.

Mr. LOWE. No, sir.

Commissioner PROUTY. That is all.

Mr. DILLARD. There is one question. You say you work all lines out of St. Louis?

Mr. LOWE. We can handle all business in connection with all lines.

Mr. DILLARD. What percentage of people who come desiring to go out of St. Louis in your office would request tickets over the Union Pacific, would you say?

Mr. LOWE. I should say two-thirds of them would want to go over the Union Pacific.

Mr. DILLARD. They naturally would request that by reason of being in your office?

Mr. LOWE. Yes, sir.

(Witness excused.)

F. S. McFARLAND, called as a witness herein, having been first duly sworn, testified as follows:

Direct examination:

Mr. DILLARD. State your residence, please.

402 Mr. McFARLAND. Omaha, Nebraska.

Mr. DILLARD. Your business?

Mr. McFARLAND. Assistant ticket agent, Union Station.

Mr. DILLARD. Do you sell for all lines?

Mr. McFARLAND. Yes, sir.

Mr. DILLARD. Mr. McFarland, give as nearly as you can the percentage of people coming to the union ticket office there requesting passage for Puget Sound points, that ask to go over the Union Pacific route?

Mr. McFARLAND. Via the Union Pacific and other station lines, 100 per cent, nearly.

Mr. DILLARD. I don't understand what you mean by Union Pacific and other station lines.

Mr. McFARLAND. We have one other trunk line; you have the Rock Island, you know.

Mr. DILLARD. Well, what I mean is this, what percentage of people desire to go over the Union Pacific and the O. S. L. and the O. R. & N. and through the Portland gateway?

Mr. McFARLAND. About 75 per cent, I should think.

Mr. DILLARD. You are acting there for all of the companies?

Mr. McFARLAND. Yes, sir.

403 Mr. DILLARD. And do not suggest any route one way or the other?

Mr. McFARLAND. No, sir.

Mr. DILLARD. Without a suggestion on their part?

Mr. McFARLAND. On their part first: yes, sir.

Mr. DILLARD. When they find that these difficulties exist at Portland, do they express dissatisfaction or not?

Mr. McFARLAND. In cases they do: yes, sir.

Mr. DILLARD. Do you know of people there who, when they find these existing difficulties, change their route and say: "Give me a ticket the other way; I don't want to do that?"

Mr. McFARLAND. Well, yes, I have known that, and the difficulty comes again, that when they speak of that the rate by the other route is higher.

Commissioner PROUTY. What do you mean by "the other route?"

Mr. McFARLAND. By St. Paul.

Commissioner PROUTY. The Burlington has a separate station, hasn't it, at Omaha?

Mr. McFARLAND. Yes, sir.

404 Commissioner PROUTY. You couldn't sell a ticket via the Burlington?

Mr. McFARLAND. No, sir.

Commissioner PROUTY. You would be obliged to sell them a ticket up to St. Paul and then west over the other lines?

Mr. McFARLAND. Yes, sir.

Commissioner PROUTY. So that as a practical matter you must sell the ticket either by the Union Pacific or by the Rock Island to Denver, and finally by the Union Pacific to Portland?

Mr. McFARLAND. Yes, sir.

Mr. DILLARD. Now, Mr. McFarland, with regard to Pullman tickets, the through routes not being open, you can not sell a Pullman ticket to any office farther than Portland, can you, without an extra charge?

Mr. McFARLAND. No, sir.

Mr. DILLARD. So that the Pullman rate by virtue of this gateway not being open has added to it the extra rate from Portland to Seattle?

Mr. McFARLAND. Yes, sir.

Mr. DILLARD. The other way round through Seattle down to Portland the Pullman rate is the same both to Seattle and Portland?

405 Mr. McFARLAND. Yes, sir.

Mr. DILLARD. That is all.

## Cross-examination:

Mr. BUNN. You couldn't sell anybody a ticket by the Burlington to Seattle, could you?

Mr. McFARLAND. How is that?

Mr. BUNN. You couldn't sell anybody a ticket via the Burlington to Seattle?

Mr. McFARLAND. Yes, sir; not out of Omaha, though.

Mr. BUNN. Not out of Omaha?

Mr. McFARLAND. No, sir.

Mr. BUNN. That is what I mean. Therefore it is natural that everybody that comes to your place should want to go by the Union Pacific, isn't it?

Mr. McFARLAND. I would like to correct that statement. We can sell a ticket via the Burlington through Denver, Union Pacific or Rock Island to Denver, and then the Burlington from there.

Mr. BUNN. When you got to Denver you would be farther away from Seattle than when you started from Omaha if you went that way, wouldn't you?

406 Mr. McFARLAND. Yes, sir.

Mr. DILLARD. Yet, I believe yesterday they showed that that was a satisfactory route from Kansas City, didn't they, through Denver?

Commissioner PROUTY. I think that is all, Mr. McFarland.

Mr. DILLARD. I think you included Omaha too, didn't you, Mr. Bunn?

Mr. BUNN. Oh, no; we didn't make any pretense that the route from Omaha to Denver, or from Kansas City to Denver, was a very good route to Seattle.

Commissioner PROUTY. I understand you join now with the Union Pacific from Colorado common points?

Mr. BUNN. Our train from Kansas City, that we claim is a good route, don't go through Denver.

Commissioner PROUTY. You virtually concede, of course, that there ought to be a route from Colorado common points to the North.

(Witness excused.)

R. D. SPECK, called as a witness herein, having been first duly sworn, testified as follows:

## Direct examination:

407 Mr. DILLARD. You may state your name, please.

Mr. SPECK. R. D. Speck.

Mr. DILLARD. Where do you live, Mr. Speck?

Mr. SPECK. Kansas City.

Mr. DILLARD. What is your business?

Mr. SPECK. City ticket agent, Union Pacific.

Mr. DILLARD. Of the Union Pacific at Kansas City?

Mr. SPECK. Of the Union Pacific at Kansas City.



Mr. DILLARD. Mr. Speck, of the people coming to buy tickets from your office, when learning of the difficulties at Portland, do they express dissatisfaction very generally?

Mr. SPECK. They do.

Mr. DILLARD. And do you find trouble in people changing, or declining to go that way when they find out those difficulties, and sometimes seeking other routes?

Mr. SPECK. They do seek other routes, yes, sir.

Mr. DILLARD. That is all.

Commissioner PROT TY. That is all.

(Witness excused.)

408 R. D. WILLIAMS, called as a witness herein, having been first duly sworn, testified as follows:

Direct examination:

Mr. DILLARD. You may state your name.

Mr. WILLIAMS. R. D. Williams.

Mr. DILLARD. Where do you live, Mr. Williams?

Mr. WILLIAMS. Chicago.

Mr. DILLARD. What is your business?

Mr. WILLIAMS. Passenger agent of the Union Pacific Railroad.

Mr. DILLARD. Then of people calling at your office desiring to go to Puget Sound points, what percentage would call for tickets over our own lines?

Mr. WILLIAMS. Oh, practically 99 out of 100.

Mr. DILLARD. What is your method of ticketing here, how do you arrange for it? I mean do you sell tickets right over your counters?

Mr. WILLIAMS. Yes, sir; we procure the ticket from the initial line at Chicago and deliver it to the passenger, making a collection from him.

Mr. DILLARD. You get tickets then over any line in Chicago 409 for these passengers?

Mr. WILLIAMS. Yes, sir.

Mr. DILLARD. Now, when you explain to them, Mr. Williams, the difficulties that surround them at Portland, what happens as to any change of route or expressions of dissatisfaction? Just explain to the commission how it happens so they will understand.

Mr. WILLIAMS. Well, there is always dissatisfaction, particularly on account of the baggage checking feature; the passengers are afraid that their train might be delayed into Portland, not giving them time to attend to that little matter, and make the inquiry as to what would occur if their baggage would not get there with them, which is pretty hard to explain. We do explain it, and then they feel also that they have got a ticket that does not read to Seattle, for instance, or to Tacoma. If we sell them a ticket to Portland with a side trip on, they think we have taken their money for something that some man two thousand miles away has got to complete for us.

Mr. DILLARD. Is the route ever changed on account of that?

Mr. WILLIAMS. I am inclined to think so, sir. They get away from us, but we do not see where they go.

410 Mr. DILLARD. After they learn that, they leave you, do they?

Mr. WILLIAMS. In some instances, yes, sir; a great many.

Commissioner PROTBY. One witness testified this morning he explained all that to the prospective passenger after he got the money. Is that your custom, or do you explain to him before he takes the ticket?

Mr. WILLIAMS. Well, we generally give the man the ticket before we get his money in our office; it is a little different than in a depot, or maybe another city office. They come in to us and spend more time to talk these things over, and they will get more details from us than they would some place else. We get the ticket, and then commence to explain to them about changing the ticket; that they would have to go to the depot ticket office and have it changed, and then go to the baggage room and recheck their baggage.

Commissioner PROTBY. Suppose a man's baggage does not get there on the train with him, what happens?

Mr. WILLIAMS. If he will go and get his ticket exchanged and go to the baggage room and exchange his check, the baggage will go on.

Commissioner PROTBY. That is to say, he can exchange his  
411 check for the baggage and have it go on?

Mr. WILLIAMS. Yes, sir.

Commissioner PROTBY. He can check his baggage out on the old check in?

Mr. WILLIAMS. Yes, sir.

Cross-examination:

Mr. BUNN. Your office is a regular Union Pacific railway office?

Mr. WILLIAMS. Yes, sir.

Mr. BUNN. A man who wants to go any other route won't generally, or naturally, come to you at all, will he?

Mr. WILLIAMS. Excepting the Southern Pacific and the Union Pacific routes; yes, sir.

Mr. BUNN. That is all.

(Witness excused.)

Mr. DILLARD. I think I asked Mr. Cotton yesterday—if I did not, before we go ahead with Mr. McMurray, I want to ask him now. I think he is the witness who testified yesterday. You can just come right up and stand right there for a moment, Mr. Cotton.

412 GEORGE D. COTTON, heretofore called as a witness herein, resumed the stand, and further testified as follows:

Direct-examination:

Mr. DILLARD. The percentage of tickets, Mr. Cotton—I do not know whether I asked you yesterday or not—that are requested over the Southern line at your office?

Mr. COTTON. Via Ogden and Huntington, you mean?

Mr. DILLARD. Yes; that is what I mean now.

Mr. CORTON. I think I touched on that—I don't know that you asked me direct—but I would say 90 or 95 per cent of our inquiries specify the Denver & Rio Grande Road, which would necessitate their going that route.

Mr. DILLARD. That is a voluntary inquiry?

Mr. CORTON. The voluntary suggestion; yes, sir.

Mr. DILLARD. There is only one other point I wanted to ask you about. How does the failure to open the Portland gateway affect the Pullman service, if you know, or are you advised as to that?

Mr. CORTON. You mean so far as securing business on account of the Pullman service, or lack of Pullman service?

113 Mr. DILLARD. So far as the price that has to be paid the Pullman Company, according to whether the northern route is taken or the route through Portland or Seattle.

Mr. CORTON. The passenger carried to Seattle going through the Ogden gateway would have to pay more for his Pullman accommodations to Seattle than he would if he went the other way.

Mr. DILLARD. Under the rules of the Pullman Company and their tariff, since you cannot sell a through ticket through Portland to Seattle, their rate is made more in that way than it is the other way. You cannot sell the Pullman ticket beyond Portland, can you?

Mr. CORTON. No. We would sell the Pullman ticket to Portland, which is the same rate, \$11 standard and \$7 tourist, as it is around the other way, and we would leave the passenger to pay his berth rate, if he chooses to take a berth, from Portland to Seattle over and above the \$11 or \$7, as the case might be.

Mr. DILLARD. That is all.

Cross-examination:

Mr. BENN. I have forgotten what railroad you are with.

114 Mr. CORTON. The Rock Island.

Mr. BENN. At Kansas City?

Mr. CORTON. Not here in Chicago.

Mr. BENN. Here in Chicago?

Mr. CORTON. Yes, sir.

Mr. BENN. You don't see many people that want to take the northern route to Seattle, do you?

Mr. BENN. Well, I don't see them; the inquiries don't indicate that we have any that want to go that way.

Mr. BENN. Wouldn't such people naturally go to some other office besides yours?

Mr. CORTON. The location of our office at Adams and Dearborn is the corner office, it is the first office in Railroad row, which would indicate that in other respects we get a good many general inquiries we send to other offices.

Mr. BENN. But you don't do much business through St. Paul, do you?

Mr. CORTON. Almost none at all.

Mr. BUNN. Almost none at all?

Mr. COTTON. Yes.

Mr. BUNN. The Milwaukee, St. Paul, Northwestern and Burlington, and the Kansas City all do much more business than  
415 the Rock Island?

Mr. COTTON. Unquestionably.

Commissioner PROUTY. What is the berth rate from here to Seattle, standard?

Mr. COTTON. Fourteen dollars standard.

Commissioner PROUTY. The same as to Seattle as it is to Portland?

Mr. COTTON. Yes, sir.

(Witness excused.)

Commissioner PROUTY. Now, Mr. Dillard, do you understand that if a through rate were established via the Portland gateway to Seattle, that the Pullman Company would sell a berth from Chicago to Seattle via Portland for \$14, which would entitle a person to an exchange order at Portland, which would give him a sleeping car accommodation on to Seattle?

Mr. DILLARD. My understanding of their method of doing business is this, if your honor please, but not being a traffic man, if I am wrong, I would want to be corrected: That if there were an open gateway there and a ticket agent who can sell the through tickets to

Seattle, that he would also have the right to sell the berth  
416 ticket through Seattle via Portland, and that the rate via that route of the Pullman Company would be exactly the same as the rate that the Pullman Company sells via the northern line, but there being no established through route properly speaking, the Pullman people do not permit the sale of this ticket through to Seattle. In other words, the Pullman ticket follows the through route. That is my understanding, if your honor please, from what I gather from these witnesses. If that is incorrect I would want to correct it.

Commissioner PROUTY. So that the effect of opening the gateway would be not to reduce the cost of the ticket to the passenger through the present arrangement, but it would reduce the cost of his Pullman space?

Mr. DILLARD. Yes.

Commissioner PROUTY. What is the berth rate from Portland to Seattle, \$2?

Mr. DILLARD. I think it is \$2 for a single berth, sir.

Mr. MURRAY. Two dollars, I believe.

Commissioner PROUTY. At the present time, of course, there is no through parlor car, no through parlor car service or tourist car service, or any other through service via Portland.

417 Mr. DILLARD. No through service whatever.

Commissioner PROUTY. Do you claim if the commission were to open that gateway it would have any jurisdiction, or it would have the jurisdiction that it ought to have, to make any order as to the operation of through cars?

Mr. DILLARD. I would not want to commit myself to that question at this time, because I really do not know, if your honor please. I am inclined to think, if I am not estopped in the future by this, to think that the commission could order the northern lines to pull the Pullman cars and our cars, if they were willing to be turned over to them there, but certainly the Pullman cars. That is the information in my mind and that is my opinion, but, as I say, I would  
 118 not want to commit myself definitely to that. Your honor is aware in a recent case which is not yet published that the Supreme Court of the United States, in passing and deciding the case, in their remarks indicate that when there are proper restrictions made that that can be done.

Commissioner PROTBY. I have no doubt the Congress of the United States might desire that done. The question properly is whether it has such a right or not. We have never made any order establishing a through freight rate or through joint freight rate which would require the interchange of equipment.

Mr. DILLARD. No, sir.

Commissioner PROTBY. That requires the carrier to get the traffic through in some way, and it is immaterial whether the equipment goes through, perhaps, or not, ordinarily.

Mr. DILLARD. I am inclined further to the view that that probably ought not to be made, as far as the freight is concerned, though I may be wrong about that; but the condition is different with the Pullman Company, which is ready to furnish the cars, and we are ready to turn them over.

119 WILLIAM McMURRAY, called as a witness herein, having been first duly sworn, testified as follows:

Direct examination:

Mr. DILLARD. What is your name, please?

Mr. McMURRAY. William McMurray.

Mr. DILLARD. Where do you live?

Mr. McMURRAY. Portland, Oregon.

Mr. DILLARD. What is your business?

Mr. McMURRAY. General passenger agent of the Oregon Railway & Navigation Company.

Mr. DILLARD. How long have you been in such position?

Mr. McMURRAY. About two years and a half.

Mr. DILLARD. How long have you been connected with the passenger work?

Mr. McMURRAY. Since 1897, except a year and a half when I was out of the service.

Mr. DILLARD. And how long at Portland connected with passenger work?

Mr. McMURRAY. Over three years and a half.

Mr. DILLARD. Mr. McMurray, I wish you would please read  
 120 into the records the orders—that is, the rules—by virtue of

which the exchanges are made at Portland, also explaining them so that the whole question may stand out clearly and distinctly.

Mr. McMURRAY. The conditions governing the handling of these orders or tickets in Portland are plainly stated in the joint tariff published by the Union Pacific Railroad Company under the heading of "Side trip from Portland, Oregon." If it is your pleasure, I will read the paragraph. It reads as follows:

"52. (2) Holders of all regular one-way first or second class tickets to Portland, Oregon, sold at Council Bluffs, Ia., Omaha, Neb., St. Joseph, Mo., Leavenworth, Kans., or Kansas City, Mo., routed via Granger, Wyo., or Ogden, Utah, and Huntington, Oregon, will be afforded a one-way side-trip ticket from Portland, Ore., to any main-line point on the Northern Pacific Railway (except east of Auburn, Wash.), or to any main-line point on the B. B. & B. C. Ry. (Bellingham to Sumas) or Great Northern Railway (except east of Everett, Wash.), or to Port Townsend, Wash., Vancouver, Victoria, or Sidney, B. C.

"(b) Holders of all regular one-way first or second class tickets to Portland, Ore., sold at Council Bluffs, Ia., Omaha, Neb., St. Joseph, Mo., Leavenworth, Kans., or Kansas City, Mo., routed via Ogden and So. Pac. Co., or via Denver, Albuquerque, Bakersfield, Stockton, or San Francisco and So. Pac. Co., also tickets sold at Denver, Colo., or Cheyenne, Wyo., at fare applying via So. Pac. Co., routed via Ogden, Utah, and So. Pac. Co., will be afforded a one-way side trip ticket from Portland, Ore., to any main-line point on the Northern Pacific Railway between Portland, Ore., and Seattle, Wash., inclusive.

"METHOD OF SECURING SIDE TRIPS.

"(c) To obtain side trip passenger must notify ticket agent at time ticket to Portland is purchased, who will attach to ticket to Portland order on depot ticket agent of O. R. & N. Co., on ticket via Huntington, and on depot ticket agent of So. Pac. Co., on tickets via So. Pac. Co., at Portland, Ore., for a one-way side-trip ticket to authorized destination, or the order may be printed, stamped, or endorsed on the contract and each coupon of the Portland, Ore., ticket. The ticket agent of the O. R. & N. Co. or So. Pac. Co. at Portland, Ore., will, upon identification of the holder of the order for such side trip ticket as the original purchaser of the Portland, Ore., ticket, lift passenger's baggage check or checks (if any), to Portland, Ore., and furnish holder of the order with continuous passage side-trip ticket, and arrange for rechecking baggage from Portland, Ore., to side-trip point at any time within twenty-four hours after arrival in Portland."

Mr. DILLARD. Something was said by some of the witnesses with regard to the conductors. As I understand what the conductor does is simply when he sees a ticket of that kind he calls the particular attention of the traveler to what is necessary to be done at Portland; is that right?

Mr. McMURRAY. That is right.

Mr. DILLARD. Just explain that.

Mr. McMURRAY. In order that passengers may have the least trouble possible in view of this contingency, the Oregon Railroad & Navigation Company issued a circular of September 15th addressed to passenger agents west of Pendleton, Oregon, giving verbatim the instructions which the Union Pacific had given to their agents. If it is the wish of the commission I will read that also, but it is simply a repetition of what is embodied in the Union Pacific tariff filed with the commission.

423 Mr. DILLARD. And the idea then is by the instructions issued to the conductor, to make it as easy as possible for the traveler to secure the new ticket and obtain the rechecking at Portland, Oregon.

Mr. McMURRAY. Not only that, but if any of them should escape the conductor, the Union Depot, the men employed at the Union Depot, know that such a condition exists, and do everything possible to assist passengers and direct them as to what they ought to do. They are pretty well posted and they do not want to see any trouble of that kind.

Mr. DILLARD. Notwithstanding that, as was stated by Mr. Woodworth yesterday, it results in a good deal of trouble in getting things through all right.

Mr. McMURRAY. Notwithstanding all the care we take, there are quite a number of cases, as shown yesterday by Mr. Collins, where passenger entirely forget that they have to recheck their baggage, or in fact that they have to present their order for a new ticket. We have found cases where they have actually gone through the line and got on the train with their orders.

424 Mr. DILLARD. Now, Mr. McMurray, after they get there and present the ticket, or the exchange order rather, how is the ticket secured, and what is the character of the ticket, and what is the likelihood or possibility of the passenger being able to take that ticket to the Northern Pacific and get the money on it? Just explain now to the court how that is done.

Mr. McMURRAY. The passenger is supposed on arrival at the Union Depot to proceed to the ticket office and present the order to the Union Depot ticket agent. He looks at the order and ascertain what the destination of the passenger is. He takes up that order—

Commissioner PROTHERY. Does not the order specify the destination?

Mr. McMURRAY. The order specifies; yes, sir; but of course he has to be very careful to state how it reads. Some of them are not written very distinctly, written in a hurry, especially where there is a rush of business. For instance, if it is an order reading to Seattle, he takes this order and takes up the order and takes a ticket, a Northern Pacific ticket, and furnishes it to the passenger. That ticket is a card ticket limited to twenty-four hours and specified in the tariff. He hands that ticket to the passenger and takes \$5.60 of O. R. N. money and puts it in the Northern Pacific till and

425 makes his record so that complete, when that is done, in order that his report may be properly made to the auditor of the Oregon Railway & Navigation Company. By turning in that order then, he gets credit for the amount he has paid to the Northern Pacific for the ticket handed to the passenger. The passenger, after he receives that ticket--the baggage room is in the same building and he is supposed to go with that ticket to the baggageman who is a joint agent, and presents his ticket for rechecking his baggage. He still holds the original check, for instance, issued by an eastern line, any eastern line. That is the claim check for his baggage. The point arises that sometimes the baggage is not there, but he turns over that check and the union baggageman rechecks the baggage to Seattle on the Northern Pacific ticket.

Mr. DILLARD. You stated that the man who purchased the Northern Pacific ticket was the Union Depot agent?

Mr. McMURRAY. Yes, sir.

Mr. DILLARD. Do you mean also that he is also agent for the Northern Pacific Railway?

Mr. McMURRAY. Yes, sir.

Mr. DILLARD. He then merely, as you phrased it, would take the money out of one till and put it into the other till?

426 Mr. McMURRAY. That is my understanding; yes, sir.

Mr. DILLARD. You say that there is a special form, something of that kind, with regard to a special ticket?

Mr. McMURRAY. Yes; it is a special form of ticket; a special form for the reason that it can be occasionally identified as being exchanged for an order on the Union Depot ticket agent at Portland. That is my understanding.

Commissioner PROUTY. That is a ticket issued by the Northern Pacific Company?

Mr. McMURRAY. Yes, sir.

Commissioner PROUTY. How does it differ from a ticket which a person who desires to go to Seattle and stepped up to the ticket window and bought himself with money would obtain?

Mr. McMURRAY. I cannot answer that exactly; I believe the Northern Pacific could tell just what kind of a ticket they furnish, but usually it is a card ticket, Mr. Commissioner.

Commissioner PROUTY. It is a sale by the Northern Pacific Company to this man of that ticket for so much money. He doesn't pay the money, but your company pays the money at the time?

427 Mr. McMURRAY. It is a sale by the Northern Pacific to the Oregon Railway & Navigation Company, not the passengers.

Commissioner PROUTY. Well, whichever way it is. Do they issue a different form of ticket than they would issue to a purchaser of a ticket to Seattle?

Mr. McMURRAY. Yes, sir; that is my understanding.

Commissioner PROUTY. Why do they do that?



Mr. McMURRAY. In order that the record may show that this particular ticket was issued on a ticket to which was attached an order on the Union Depot at Portland for Seattle.

Commissioner PROUTY. What difference does it make? They get their money for it in either case.

Mr. McMURRAY. It makes a difference in the accounting. In other words, the ticket which that passenger held, for instance, would carry the same rate to Portland as it does to Seattle.

Commissioner PROUTY. That doesn't make any difference to the Northern Pacific people. Your people buy a ticket from the Northern Pacific Company for this passage?

Mr. McMURRAY. Yes, sir.

Commissioner PROUTY. If he wants to go to Seattle, you  
428 pay how much for it?

Mr. McMURRAY. \$5.60.

Commissioner PROUTY. If he wants to go to Tacoma, you pay how much?

Mr. McMURRAY. \$4.35.

Commissioner PROUTY. And if he wants to go to some other point, you pay a different sum?

Mr. McMURRAY. Yes, sir.

Commissioner PROUTY. You pay for it exactly what I would pay if I stepped up to a window and bought a ticket to that same point?

Mr. McMURRAY. Yes, sir.

Commissioner PROUTY. And you buy it against the will of the Northern Pacific Company; they don't want you to do it, they don't want you to route your passengers that way. Now, do you say they issue for your benefit a special form of ticket which that man cannot use unless he uses it; that it can be subsequently identified?

Mr. McMURRAY. Yes, sir.

Mr. DILLARD. It is your understanding that they do keep a tab in some way of the form of card ticket that is issued?

Mr. McMURRAY. Yes, sir; that is my understanding.

429 Mr. DILLARD. That you have understood from the union agent there?

Mr. McMURRAY. Yes, sir.

Mr. DILLARD. Personally you don't know?

Mr. McMURRAY. Personally I have never seen one of their tickets.

Mr. DILLARD. You never have looked at it and you may be mistaken as to that?

Mr. McMURRAY. Yes, sir.

Mr. DILLARD. But you were advised by the union ticket agent that it was a special card ticket of some sort of a type that could not be redeemed; you were advised of that by McKelvey?

Mr. McMURRAY. Yes, sir; and only good for twenty-four hours after it is issued.

430 Mr. DILLARD. That is your advice from Mr. McKelvey, the joint agent of the two lines there?

Mr. McMURRAY. Yes, sir.

Mr. DILLARD. You may be mistaken about that?

Mr. McMURRAY. Yes, sir.

Mr. DILLARD. And simply give it as your information? I am sorry I haven't that information more definitely. Possibly we may be wrong about it, but that is our information. That is all.

(Witness excused.)

Mr. DILLARD. If your honor please, Mr. Lynde has some witnesses he wishes to call.

CHARLES A. CAIRNS, called as a witness herein, having been first duly sworn, testified as follows:

Direct examination:

Mr. LYNDE. I do not know how far your honor desires to have Mr. Cairns examined, but I brought him here at your request, and  
431 he is prepared to testify on any point you may desire.

Commissioner PROTBY. The Northwestern road was made a party to this proceeding, and it occurred to me that some representative of that road ought to be here to state what the view of that company was as to this route, and giving its reasons for that view, whatever it may be.

Mr. LYNDE. There are certain peculiar situations with respect to the Northwestern line which it may be proper to bring out. Just state your name, please.

Mr. CAIRNS. Charles A. Cairns.

Mr. LYNDE. State your position with the Northwestern.

Mr. CAIRNS. General passenger and ticket agent.

Mr. LYNDE. How long have you held that position with that company?

Mr. CAIRNS. About eight years.

Mr. LYNDE. Your office is here in Chicago?

Mr. CAIRNS. Yes, sir.

Mr. LYNDE. Now, Mr. Cairns, you are familiar with the questions which are under consideration on this hearing, are you not?

Mr. CAIRNS. Yes, sir; I have listened quite attentively.

432 Mr. LYNDE. I will lead the witness a little, Mr. Burr. Our lines run through the States of Wisconsin, Illinois, Iowa, Minnesota, and in Nebraska, Michigan, and North Dakota.

Mr. CAIRNS. And Wyoming.

Mr. LYNDE. Also in Wyoming?

Mr. CAIRNS. Yes.

Mr. LYNDE. It is a fact, Mr. Cairns, is it not, that there is a difference with respect to the situation as to certain portions of our line? I mean by that, this: You take Wisconsin points, and from those points the direct, reasonable and satisfactory, route would be by St. Paul, would it not, generally speaking?

Mr. CAIRNS. Yes, sir; in one sense, yes; in another sense we give the passenger the privilege of going either by way of St. Paul, or further north of that territory.

Mr. LYNDE. I am speaking of the geographical location. It is the more direct route via St. Paul from those points, is it not?

Mr. CAIRNS. Slightly so; yes, sir.

Mr. LYNDE. Do you find any demand from passengers from Wisconsin points for a routing via the Portland gateway, Denver, Salt Lake, and Portland?

433 Mr. CAIRNS. A very material demand; yes, sir.

Mr. LYNDE. But generally speaking, the travel moves, does it not, from those points via St. Paul? I am speaking of Wisconsin now.

Mr. CAIRNS. Well, there is a large percentage, a certain percentage of it, and then the other percentage, of course, goes through the Omaha gateway.

Mr. LYNDE. What percentage would you say?

Mr. CAIRNS. Pretty nearly evenly divided.

Mr. LYNDE. Even from Wisconsin?

Mr. CAIRNS. Yes, sir; certain sections of Wisconsin.

Mr. LYNDE. What sections do you refer to?

Mr. CAIRNS. I refer more particularly to the southern sections of Wisconsin.

Mr. LYNDE. Just describe that by points, if you can.

Mr. CAIRNS. Take our Fox River country, Green Bay and Milwaukee, La Crosse, Madison, Beloit, Racine, Kenosha, and that belt of territory covered in a general way by those lines.

Mr. LYNDE. Would that demand you refer to be for round-trip tickets, or one-way tickets?

Mr. CAIRNS. All classes of tickets.

434 Mr. LYNDE. From all intermediate points between Chicago and the Missouri River, what is the direct route to Seattle?

Mr. CAIRNS. The only direct and reasonable route that we have is through the Portland gateway.

Mr. LYNDE. Why is that?

Mr. CAIRNS. Simply because we have no lines radiating through St. Paul that are practicable, that are direct.

Mr. LYNDE. That is to say, the passenger would have to go back to Chicago on our line and go up to St. Paul and around that way?

Mr. CAIRNS. He would have to do that or else travel over a long into the junction point, which would make a very inconvenient route to travel.

Mr. LYNDE. What is the movement on the Northwestern line; that is to say, how is this traffic handled, via the two routes?

Mr. CAIRNS. The Northwestern in connection with the Union Pacific operates through service from Chicago to Portland without any change on either class of tickets.

Mr. LYNDE. That is through cars, running through?

Mr. CAIRNS. Yes, sir.

435 Mr. LYNDE. What trains do they run on?

Mr. CAIRNS. We run them on two separate trains; on the Overland Limited that handles only first-class passengers, our train 3,

and the night train leaving here at 10.45 handles both first class and second class—all classes of tickets.

Mr. LYNDE. With through cars to Portland?

Mr. CAIRNS. Yes, sir.

Mr. LYNDE. Via St. Paul, of course the connection is made there? Our cars only run through to St. Paul?

Mr. CAIRNS. Through to St. Paul; yes, sir.

Mr. LYNDE. But from such points as DeKalb, Sterling, and Clinton, Cedar Rapids, and other points intermediate between Chicago and the Missouri River, so far as the Northwestern is concerned, the direct route is via Portland, is it?

Mr. CAIRNS. Yes, sir.

Mr. LYNDE. Do you know anything about the demand for tickets via Portland on these intermediate points: to what extent there is a demand?

Mr. CAIRNS. That is between here and the Missouri River on our main line?

Mr. LYNDE. Yes, sir: I am speaking of Illinois and Iowa points.

436 Mr. CAIRNS. Practically the entire demand there is *is* through the Portland gateway.

Mr. LYNDE. How much does it amount to, or have you any figures?

Mr. CAIRNS. I haven't any figures; no, sir. It is reasonable to say that all of our business goes that way that we get hold of.

Mr. LYNDE. That is the way you are adapted by your service to handle it?

Mr. CAIRNS. Yes, sir; governed largely by our service.

Mr. LYNDE. But at Chicago, I assume, whatever tickets the Northwestern sells to Seattle would be routed by either one of these two roads?

Mr. CAIRNS. We give the passengers the privilege of the gateway he desires to go through.

Mr. LYNDE. Do you know anything about the extent of the demand here at Chicago as between the two routes?

Mr. CAIRNS. Well, the demand for tickets here in Chicago is greater via our line through the Omaha gateway than it is through St. Paul.

Mr. LYNDE. Is it a fact that in your opinion the North-  
437 western service—that is, the Overland Limited service—that factor affects the demand?

Mr. CAIRNS. Yes, sir; that is the factor that governs it very largely.

Mr. LYNDE. I think that is all that occurs to me. If there are any other questions Mr. Dillard or your honor desires to ask, I should be glad to have you do so.

Commissioner PROUTY. Mr. Dillard, is there anything you desire to ask?

Mr. DILLARD. No.

Commissioner PROUTY. Mr. Bunn?

Mr. BUNN. No.

Commissioner PROTBY. Do you operate at all from Omaha in connection with the Burlington road via Billings?

Mr. CAIRNS. No, sir; we do not.

Commissioner PROTBY. Have you any joint rates via that route?

Mr. CAIRNS. Yes, sir.

Commissioner PROTBY. Do you sell any tickets via that route?

Mr. CAIRNS. None whatever. I won't say none whatever, but the demand for them is extremely limited.

(Witness excused.)

38 E. B. PARMELEE, called as a witness herein, having been first duly sworn, testified as follows:

Direct examination:

Mr. LYNDE. State your name, please.

Mr. PARMELEE. Edward B. Parmelee.

Mr. LYNDE. What is your business?

Mr. PARMELEE. City ticket agent of the Northwestern.

Mr. LYNDE. Here in Chicago?

Mr. PARMELEE. Yes, sir.

Mr. LYNDE. And its city ticket office on Clark street?

Mr. PARMELEE. Clark and Adams street.

Mr. LYNDE. How long have you been there?

Mr. PARMELEE. I have been in the city office about twenty-eight years.

Mr. LYNDE. I think that you have, as I understand, Mr. Parmelee, to supplement Mr. Cairns' testimony, you have some figures with reference to the actual sales of tickets on the different routes over which you do that business?

Mr. PARMELEE. I made a request of my accountants yesterday to go back about two months and give me the business as routed  
40 over the different lines, and I find that the business via Portland has been in excess of any other line, any other route.

Commissioner PROTBY. You are speaking now of business which originates in Chicago?

Mr. PARMELEE. In Chicago, yes, sir; the city business.

Mr. BUNN. What months were those, Mr. Parmelee?

Mr. PARMELEE. The last two months, two and a half months possibly. I didn't go back farther than that. It was for my own information I looked it up.

Mr. LYNDE. Have you got those figures with you?

Mr. PARMELEE. Yes, sir; I think I have.

Mr. LYNDE. You may just read them off, if you have a memorandum of them.

Mr. PARMELEE. It showed by the Union Pacific route the sale of 155 tickets via the Union Pacific road; 69 that went via that road; and there were 86 via the northern roads, the northern routes.

Mr. LYNDE. What roads do you call the northern roads?

MR. PARMELEE. The Union Pacific, the Northern Pacific, Great Northern, and Canadian Pacific.

MR. LYNDE. I don't want to misunderstand you: you say that there are 69 out of the total?

440 MR. PARMELEE. Out of the total, yes, sir.

MR. LYNDE. By way of Portland?

MR. PARMELEE. Yes, sir.

MR. LYNDE. Were tickets sold over any other route in connection with the Union Pacific?

MR. PARMELEE. There were a very few of these 69 over the Rio Grande, a very small proportion, three or four tickets.

MR. LYNDE. Suppose you give the figures there over each route, as you have them.

MR. PARMELEE. The Union Pacific was 69; the Northern Pacific, 58; Great Northern, 26; and the Canadian Pacific, 2.

MR. LYNDE. That was during the last two months?

MR. PARMELEE. That was during the last two months virtually.

MR. LYNDE. How do you find that, generally speaking, back of that period? Take it in the summer time.

MR. PARMELEE. I think in the summer time the northern business is heavier, the percentage probably would be a little less via the southern route. I think that is owing probably to the weather conditions, and its being a southern line would have some influence.

441 MR. LYNDE. Your experience is that in the winter time the travelers prefer the southern route?

MR. PARMELEE. Yes, sir, of course; there are a great many of those passengers want to stop at Denver, Salt Lake City, and other points.

MR. LYNDE. You find there is a demand for tickets routed that way?

MR. PARMELEE. Yes, sir.

MR. LYNDE. What can you say, Mr. Parmelee, as to the effect of the conditions at Portland on the sale of tickets via that route?

MR. PARMELEE. We have lost some business that expressed a desire to go that way on account of the difficulties that they have had; that is, we have lost the business by that routing. Of course, we have had the other line to fall back on.

MR. LYNDE. You can sell both ways?

MR. PARMELEE. Yes, sir; we can sell both ways.

MR. LYNDE. In other words, the passenger has his option as to the route he will take?

MR. PARMELEE. Yes, sir; that is particularly true with ladies. When you branch the subject of changes and securing space, they get frightened and prefer the other line.

442 MR. LYNDE. But so far as you are concerned in your office you can sell them a ticket by both lines?

MR. PARMELEE. We sell them both ways; yes, sir, as they prefer it.

MR. LYNDE. I don't know anything further that I care to inquire about.

Commissioner PROTBY. If you sell a ticket via some northern line through St. Paul, do you arrange for the Pullman space beyond St. Paul?

Mr. PARMELEE. We do in most cases; we wire for the space.

Commissioner PROTBY. You can sell a through berth, can you, to Seattle, via St. Paul?

Mr. PARMELEE. No, sir; we do not; we sell usually to St. Paul, and it is obtained from the connecting line there.

Commissioner PROTBY. So that the purchaser buys a berth here to St. Paul and purchases it from the connecting lines from St. Paul.

Mr. PARMELEE. We can go into our connecting lines here and secure the sleeper on beyond St. Paul which we do quite frequently.

Mr. LYNDE. You can make the reservations for them here?

Mr. PARMELEE. Yes, sir.

443 Mr. LYNDE. There is some delay at St. Paul of one or two hours?

Mr. PARMELEE. There is on our 6.30 train; that arrives at 7.20 and leaves at 10.15 or 10.30, depending on the route. Our night train makes a shorter connection.

Cross-examination:

Mr. BUNN. When a passenger comes to the Northwestern road going to St. Paul, your interest is to send him via Portland, isn't it?

Mr. PARMELEE. Our rule in the office is to find out which way the passenger prefers to go.

Mr. BUNN. Just answer my question.

Mr. PARMELEE. Yes.

Mr. BUNN. You haul farther and make more revenue if you send him via Portland?

Mr. PARMELEE. I think there is a little difference in favor of the Omaha line.

Mr. BUNN. That is all.

(Witness excused.)

444 A. C. POORE, heretofore called as a witness herein, resumed the stand and further testified as follows:

Direct examination:

Mr. DUFFIN. You have heard Mr. McMurray's statement on the stand as to a special form of ticket being sold and a check being kept at Portland. Was the statement as he gave it correct?

Mr. POORE. Yes, sir; a special ticket is kept at the Portland depot. It was placed in effect a good many years ago, when there were no concurrences or anything like that, and the Union Pacific used to buy our local tickets up there, and to avoid loss of business on Portland business up there, using Seattle tickets and buying these Portland tickets, and buying the Portland Seattle tickets, and their being scalped and sold, we put a special ticket in so they could not be redeemed; otherwise they would have been able to make a \$5.00 rate

less to Portland than the Northern Pacific by the redemption of these card tickets.

Mr. BUNN. I have been waiting to show this. Is this the form? [Handing ticket to witness.]

Mr. POORE. That is my understanding as to the form. It 445 has been there a great many years.

Mr. BUNN. It is a special signature ticket and will identify the passenger?

Mr. POORE. Yes; it is placed in effect purely to avoid the Union Pacific scalping Portland business, and incidentally also to keep some track of the amount of business that came that way, but the chief effect was to hinder them from scalping Portland business.

Mr. DILLARD. And that ticket, which you put in to keep us good, you now continue to use in such a way as you have indicated on these exchange orders?

Mr. POORE. Yes, sir; our people did not deem it desirable to take that out at the time of the change, because it would look bad, so to speak.

Commissioner PROTBY. Now, you say that this ticket was put in to prevent the Union Pacific from scalping the Portland business. The Union Pacific paid you for this ticket?

Mr. POORE. Yes, sir.

Commissioner PROTBY. Your regular fare?

Mr. POORE. Yes, sir.

Commissioner PROTBY. How could they scalp Portland busi- 446 ness by getting that money back again?

Mr. POORE. If it had been an ordinary card ticket, the passenger could have sent that card ticket to us, saying: "I did not use this ticket; please refund the money," and in accordance with the usual practice of railroads the money is refunded on unused tickets.

Commissioner PROTBY. What difference does that make; you have got the money once?

Mr. POORE. Yes, sir; but it would give them a \$5.60 less rate to Portland in the old days than we would have. The passenger would know this, or might know it, and he would get a \$5.60 less rate than we could make.

Commissioner PROTBY. I see; he would buy a ticket to Seattle when he wanted to go to Portland. That had better be marked as an exhibit.

(Said document so offered and received in evidence was marked "Poore Exhibit 1," and is hereto attached and made a part hereof.)

Mr. BUNN. I think one witness yesterday said that ticket was good only on the first train out of the station.

Mr. DILLARD. That is a mistake, and it is admitted that it is good for twenty-four hours.

447 Mr. BUNN. That is all.

(Witness excused.)



Commissioner PROUTY. Now, Mr. BUNN, have you some more witnesses?

Mr. BUNN. No; I think not.

Commissioner PROUTY. Mr. LOSSOW, have you any witnesses you desire to call?

Mr. LOSSOW. I would like to have Mr. Eustis take the stand a moment.

P. S. EUSTIS, called as a witness herein, having been first duly sworn, testified as follows:

Direct examination:

Mr. LOSSOW. Mr. Eustis, your road runs from Chicago to St. Paul, and through Omaha to Denver and delivers your business for Seattle at either one of those two gateways, does it not?

Mr. EUSTIS. No, we do not do business through Denver to Seattle.

Mr. LOSSOW. But through Omaha and Billings?

448 Mr. EUSTIS. Through Omaha and Billings to Seattle; through St. Paul to Seattle.

Mr. LOSSOW. I want to ask you whether or not you have any demand from passengers for a route via the Portland gateway?

Mr. EUSTIS. Of course we may have; it is difficult for me to tell here; but we may have, and probably do at different points on the line a demand for tickets to Seattle via Portland, and by every conceivable route through the country, but we have no trouble on our railroad. As soon as we get such a passenger in the office, by showing him the difference of our time, the shortest distance and the better service through Billings or St. Paul, we can take him every time away from the Union Pacific road; all we want is to get him in the office.

Mr. DILLARD. You don't object to the gateway being open, then, do you?

Mr. EUSTIS. I prefer to have it closed tighter than it is.

Mr. LOSSOW. The reason I ask this question is, I thought perhaps you had considerable demand on account of a letter which you wrote to the commission.

449 Mr. EUSTIS. A year ago?

Mr. LOSSOW. Yes, a year ago; in which you state "I think you will recognize it—in which you state "I would state that we have had requests from passengers in Missouri, Iowa, and Illinois on our road and from connecting lines for through rates and through tickets via Huntington and Portland to points north thereof on the Northern Pacific Railway, and we have been forced to refuse them because of the situation as we understand it."

Mr. EUSTIS. That is true; undoubtedly we have such requests all of the time. The point of that was that if such a route were available to the public by other roads and not by ours we would occasionally lose a short haul or some haul on a passenger if we could not talk him into going by way of Billings.

Mr. LOSSOW. I wanted to know the extent of the demand.

Mr. EUSTIS. It is very limited.

Commissioner PROUTY. How much business, Mr. Eustis, do you actually handle from Omaha via Billings to North Pacific coast points?

Mr. EUSTIS. I couldn't say offhand, Mr. Commissioner: we  
450 handle via Billings every day from all points to the coast about one hundred passengers, I should judge.

Commissioner PROUTY. You don't know how many of those passengers go to Puget Sound points finally?

Mr. EUSTIS. No; quite a large percentage are Spokane and west, but I am unable to say how many to Puget Sound. I did have a statement made; I have such figures in the office, but I don't recall what the figures are.

Commissioner PROUTY. I would ask, if it is not too much trouble, to have you file that statement as to how many passengers you handle to points west of Spokane from Omaha via Billings.

Mr. EUSTIS. From Omaha alone?

451 Commissioner PROUTY. And the same statement from Kansas City via Billings?

Mr. EUSTIS. Yes. For any particular period of time?

Commissioner PROUTY. Take it for a month, that would be sufficient; perhaps in order to make it a representative statement you ought to take one winter month and one summer month.

Mr. EUSTIS. All right.

Cross-examination:

Mr. DILLARD. Did I understand you, Mr. Eustis, to say that you did not handle Puget Sound business through Denver?

Mr. EUSTIS. Through Denver and Huntingdon, through Denver and Portland, or through Portland by any route.

Mr. DILLARD. I understood you to say, I did not quite catch it, but I understood you to say that you did not handle Puget Sound business through Denver but handled it on your other line.

Mr. EUSTIS. No; I mean by that, I thought it was perfectly clear, that we did not send business through Denver or Portland to Puget Sound points. We have no such tariff as the Union Pacific has for doing that business.

452 Mr. DILLARD. Do you handle Puget Sound business through Denver?

Mr. EUSTIS. Certainly we handle a large amount of it through Denver and Billings, originating at Denver and coming from the south of Denver, through Billings.

Mr. DILLARD. How do you handle it from Nebraska?

Mr. EUSTIS. From eastern Nebraska it all goes over our main line to Billings, and further west it goes through Bush, Sterling, and Sidney to catch the Billings route.

Mr. DILLARD. Take a passenger at Ellsworth, what would be his natural route via Denver?

Mr. EUSTIS. Union Pacific to Denver and Burlington.

Mr. DILLARD. He would have to pay a local fare to Denver, would he?

Mr. EUSTIS. No.

Mr. DILLARD. He would not come east to Kansas City?

Mr. EUSTIS. I think not; he would go to Denver and the Burlington from there. That is if they sold him a ticket that route. They have them on sale in Kansas.

Mr. DILLARD. Mr. Eustis, a letter was read to you by Mr. Lossow which you wrote to the commission. At whose instance did you write that letter?

453 Mr. EUSTIS. My owl.

Mr. DILLARD. Were you not requested by the Northern Pacific to write it?

Mr. EUSTIS. I think not.

Mr. DILLARD. You think you were not?

Mr. EUSTIS. I think not.

Mr. DILLARD. Wasn't there a suggestion that you should write it, and the conference between you on that point was that you desired to put the Union Pacific out of business to Puget Sound points?

Mr. EUSTIS. No; that was not it at all. There may have been a conference, and if they had asked me to do it I would have done it. I don't recall that they did, but if they did I would do so.

Mr. DILLARD. You stated a moment ago that you would like to have that gateway closed tighter than it now is?

Mr. EUSTIS. Yes.

Mr. DILLARD. Why?

Mr. EUSTIS. Because I want all the business through Billings for our road.

Mr. DILLARD. You then, in your view of a reasonable route, think that the convenience of the public should not be  
454 regarded?

Mr. EUSTIS. Oh, not at all.

Mr. DILLARD. Then you think the convenience of the public should not be regarded—

Mr. EUSTIS. I did not say that; have no such idea.

Mr. DILLARD. Then your idea is that if you can furnish them with as good equipment, as good accommodations and as quick time, that that is a route which you are entitled to have them take irrespective of a desire upon their part to go from the same place of origin to the same destination via another route?

Mr. EUSTIS. I certainly do.

Mr. DILLARD. That is your view?

Mr. EUSTIS. My object is to make money for the Burlington road.

Mr. DILLARD. For the Burlington road?

Mr. EUSTIS. Yes. I do it by supplying superior service and then hoping that no other road has as good a route.

Mr. DILLARD. Well, you want to add to that superior service by shutting the Portland gateway, don't you?

Mr. EUSTIS. I would.

Mr. DILLARD. That is all.

455 Cross-examination:

Mr. BUNN. What are the considerations, Mr. Eustis, that determine the bulk of the travel?

Mr. EUSTIS. Well, in my experience there are several things. The question of time from point of origin to point of destination. Through service as compared with change of cars. Distance, and where those things are all equal between routes it comes down then to a final question of the perfection of detail in service.

Mr. BUNN. Dining cars, electric lights, and so forth?

Mr. EUSTIS. Yes, but the railroad that combines most of those features, the best through service, the best time, the shorter distance, and the comfort of the trip, the road that comes closest to having all of that, or has the larger part of those elements, has the best route, and will get most of the business.

Commissioner PROUTY. That is all, Mr. Eustis.

Mr. DILLARD. Your honor requested Mr. Eustis to furnish some statements?

Commissioner PROUTY. Yes.

Mr. DILLARD. Will you be kind enough to let us have copies when you send that to the commission?

456 Mr. EUSTIS. I shall, if directed.

Commissioner PROUTY. Yes; when you send a copy to the commission, send a copy to Mr. Dillard.

Mr. DILLARD. Yes, if you will be so kind. I am sorry you feel you should not be directed to do so.

Mr. EUSTIS. I would like to get a statement of your business.

Mr. DILLARD. We have that in the record.

Commissioner PROUTY. That is already in the case. I may say if you have any objection to furnishing that statement, you need not furnish it. It is not of sufficient importance.

Mr. EUSTIS. It happens that a few months ago I made up such a statement and I can put my hand on it, I think.

Commissioner PROUTY. If you have no objection to furnishing such a statement, you may do so.

Mr. EUSTIS. I haven't any.

Mr. LOSSOW. There is only one thing that might be of interest to show in this connection, and that is to show what the demand of the public is from points like New York, Boston, and Pittsburg, as to which route the passengers would want to go.

Commissioner PROUTY. How are you going to show that?

Mr. LOSSOW. I do not know how we can show that.

457 Commissioner PROUTY. I hardly think we will attempt to get any testimony on that point. It would be instructive if we had it.

If there is no further testimony, this will conclude the hearing at this time. I presume that all parties will want to argue this case

before the full commission, and if it is convenient to you gentlemen I think we will set this case down for argument some time the first week in April. Does that suit you, Mr. Dillard?

Mr. DILLARD. That will suit me, so far as I can now tell, your honor.

Commissioner PROUTY. Mr. Lynde, I do not know whether you expect to be heard.

Mr. LYNDE. I was going to make that excuse. I do not think I really have any right to be present.

Commissioner PROUTY. Yes, Mr. Bunn, would the first week in April suit you? It may be that the commission has some other engagement or some other assignment which will interfere with this, but unless it has it may be understood that this case stands for argument in Washington the first Wednesday after the first Monday in April. Has anybody a calendar here so we can tell what date that is?

458 Mr. DILLARD. If we desire to file briefs, we may be permitted to do so?

Commissioner PROUTY. Yes, I was going to say that parties may file briefs, making service on one another at any time within five days of the date set for argument.

Mr. BUNN. Your honor, that would be Wednesday, April seventh.

Commissioner PROUTY. Then you may understand that this case stands for argument in Washington at ten o'clock in the forenoon on Wednesday, April seventh. If for any reason it cannot be heard at that time, you will be notified of the date.

(Hearing closed.)

459 Thereafter and on June 5th, 1909, the following order granting temporary restraining order, etc., was filed in said cause, to wit:

460 United States Circuit Court, District of Minnesota,

NORTHERN PACIFIC RAILWAY COMPANY, complainant, |

v. |

INTERSTATE COMMERCE COMMISSION, defendant. |

Mr. C. W. Bunn, for complainant.

Mr. Luther M. Walter, for the commission.

By consent of the parties to this suit the motion of the complainant for a preliminary injunction herein was heard before Sanborn, Van Devanter, Hook, and Adams, circuit judges, on May 28, 1909, and

Whereas, The Interstate Commerce Commission, on May 4, 1909, ordered the Chicago & Northwestern Railway Company, the Union Pacific Railroad Company, the Oregon Short Line Railroad Company, the Oregon Railroad and Navigation Company, and the Northern Pacific Railway Company to establish, on or before July 1, 1909, and to maintain in force thereafter, during a period of not less than

two years, through routes and joint rates applicable thereto for the transportation of passengers and the baggage of such passengers from Chicago, Illinois, and other points on the Chicago & Northwestern Railway between Chicago, Illinois, and Council Bluffs, Iowa, including the latter point, and from points on the Union Pacific Railroad between Colorado common points, so-called, on the west, and Omaha, Nebraska, and Kansas City, Missouri, on the east, including the latter two points, via Portland, Oregon, to points in the State of Washington on the Northern Pacific Railway between said Portland  
461 and Seattle, Washington, including the latter point, and in the opposite direction from said points on the Northern Pacific Railway, via Portland, Oregon, to said eastern points.

And whereas, after due consideration of the evidence presented upon the hearing before said circuit judges, they are unanimous in the opinion that on May 4, 1909, there did exist a through route for the transportation of passengers and the baggage of such passengers between the eastern and western points mentioned in said order, and that said existing route did then and still does conform to and satisfy that provision of the statute prescribing and limiting the duties and powers of the Interstate Commerce Commission in the premises, which reads, "provided no reasonable or satisfactory through route exists," and that by reason thereof the said order of the Interstate Commerce Commission was erroneously and wrongfully made and ought not to be enforced during the pendency of this suit;

It is hereby ordered, that the said order of the said commission be and the same is suspended, and the said commission, its attorneys, agents, and employes are hereby restrained and enjoined from enforcing said order until the final hearing and decision in this suit, or the further order of this court.

This order shall take effect and be enforced upon the filing with the clerk of this court a bond in the sum of fifty thousand dollars (\$50,000.00), approved by one of the judges of this court, and conditioned that the Northern Pacific Railway Company will pay any and all damages which result from the making of this order in case the order shall not be sustained.

WALTER H. SANBORN,  
WILLIS VAN DEVANTER,  
WILLIAM C. HOOK,  
ELMER B. ADAMS,

*Circuit Judges.*

(Endorsed:) Order granting temporary restraining order upon filing of security, &c. Filed June 5th, 1909. Henry D. Lang, clerk.

462 Thereafter and on the 7th day of June the following bond for \$50,000.00 was filed in said cause, viz:

463 United States Circuit Court, District of Minnesota.

NORTHERN PACIFIC RAILWAY COMPANY,  
complainant,

*vs.*

INTERSTATE COMMERCE COMMISSION,  
defendant.

Know all men by these presents that the Northern Pacific Railway Company, a corporation organized under the laws of the State of Wisconsin, having its principal operating office in Saint Paul, Minnesota, as principal and the National Surety Company, a corporation organized under the laws of the State of New York, as surety, are held and firmly bound unto Henry D. Lang, as clerk of the Circuit Court of the United States for the District of Minnesota, in the penal sum of fifty thousand dollars (\$50,000.00) for the payment of which, well and truly to be made, the obligors bind themselves and their respective successors and assigns firmly by these presents.

The condition of this obligation is such, that whereas the Northern Pacific Railway Company has commenced a suit in the United States Circuit Court for the District of Minnesota against the Interstate Commerce Commission, and in such suit the court on June 5, 1909, filed its order granting a temporary injunction as more fully stated in the order, which injunction was to take effect and be in force upon filing with the clerk of said court a bond in the sum of fifty thousand dollars (\$50,000.00) conditioned as hereinafter stated, and the Northern Pacific Railway Company desires to make effective and put in force the said injunctive order.

464 Now therefore, if the Northern Pacific Railway Company shall well and truly pay any and all damages which may result from the making of said injunctive order in case the order shall not be sustained, then this obligation is to be void, otherwise to remain in full force.

In witness whereof the Northern Pacific Railway Company has executed this instrument by its president and under its corporate seal, and the National Surety Company has executed this instrument by its attorney in fact and under its corporate seal.

NORTHERN PACIFIC RAILWAY COMPANY,  
[Corporate seal] By HOWARD ELLIOTT, *Its President*,  
N. P. Ry. Co.]

DANIEL L. YORK,  
L. A. GREEN,  
[Corporate seal] NATIONAL SURETY COMPANY,  
By C. M. BEND, *Its Attorney in Fact*,  
National Surety Company.]

STATE OF MINNESOTA,

*County of Ramsey, ss:*

On this 7th day of June, A. D. 1909, before me appeared Howard Elliott, to me personally known, who being by me duly sworn doth say that he is the president of the Northern Pacific Railway Company, a corporation organized under the laws of the State of Wis-

consin; that the seal affixed to the foregoing bond is the corporate seal of said corporation, and the said instrument was signed and sealed in behalf of said corporation by authority of its board of directors, and said Howard Elliott acknowledged the same instrument to be the free act and deed of said corporation.

HOWARD ELLIOTT.

Subscribed and sworn to before me this 7th day of June 1909.

[Notarial seal.]

W. T. FRANCIS.

*Notary Public, Ramsey County, Minn.*

My commission expires April 5, 1911.

465 STATE OF MINNESOTA.

*County of Ramsey, ss:*

On this 7th day of June, 1909, before me personally appeared C. M. Bend, attorney in fact of the National Surety Company, the above-named corporation, with whom I am personally acquainted, who, being by me duly sworn, said that he is attorney in fact of said corporation, the National Surety Company, that he knows the corporate seal, that it was affixed by order of the board of directors of said corporation, and that he signed said instrument as attorney in fact of said corporation by like authority, and the said C. M. Bend acknowledged said instrument to be the free act and deed of said corporation.

C. M. BEND.

Subscribed and sworn to before me this 7th day of June, 1909.

[Notarial seal.]

DANIEL I. YORK.

*Notary Public, Ramsey County, Minn.*

My commission expires Aug. 25th, 1915.

(Endorsed:) Bond.

The within bond and the security offered thereby are approved this June 7th, 1909.

WALTER H. SANBORN,

*Circuit Judge.*

Filed, June 7th, 1909. Henry D. Lang, clerk.

Thereafter, and on June 9th, the following praecipe for injunction pendente lite was filed in said cause, to wit:

466 Circuit Court of the United States, District of Minnesota,  
Third Division.

NORTHERN PACIFIC RAILWAY COMPANY

*vs.*

THE INTERSTATE COMMERCE COMMISSION.

Præcipe for injunction.

To the clerk of the above-named court:

Please issue injunction in the above-entitled cause.

CHARLES W. BUNN,

*Solicitor for Complainant.*



(Endorsed:) Praeipe for injunction pendente lite. Filed June 9th, 1909. Henry D. Lang, clerk.

Thereafter, and on the 9th day of July, the following injunction was issued out of and under the seal of said court, which said injunction was returned and filed in the clerk's office on July 17th, served by the marshal for the District of Columbia, viz:

467 Circuit Court of the United States, District of Minnesota,  
Third Division.

NORTHERN PACIFIC RAILWAY COMPANY	} Equity No. 893.
<i>vs.</i>	
THE INTERSTATE COMMERCE COMMISSION.	

UNITED STATES OF AMERICA.  
*District of Minnesota, Third Division, ss.*

*The President of the United States of America to the Interstate Commerce Commission, Greeting:*

Whereas, it hath been represented to the judges of our Circuit Court of the United States for the Third Division of the District of Minnesota in chancery sitting, on the part of the Northern Pacific Railway Company, complainant, in its certain bill of complaint, exhibited in our said Circuit Court on the chancery side thereof, before the judges of the said court against you, the Interstate Commerce Commission, the defendant.

That you, the Inter-state Commerce Commission, the said defendant, did on May 4, 1909, order the Chicago and Northwestern Railway Company, the Union Pacific Railroad Company, the Oregon Short Line Railroad Company, the Oregon Railroad & Navigation Company, and the Northern Pacific Railway Company, to establish on or before July 1st, 1909, and to maintain in force thereafter during a period of not less than two (2) years, through routes and joint rates applicable thereto for the transportation of passengers and the baggage of such passengers from Chicago, Illinois, and other points on the Chicago and Northwestern Railway between Chicago, 468 Illinois, and Council Bluffs, Iowa, including the latter point, and from points on the Union Pacific Railroad between Colorado common points, so called, on the west, and Omaha, Nebraska, and Kansas City, Missouri, on the east, including the latter two points, via Portland, Oregon, to points in the State of Washington on the Northern Pacific Railway between said Portland and Seattle, Washington, including the latter point, and the opposite direction from said points on the Northern Pacific Railway via Portland, Oregon, to said eastern points.

And whereas, by consent of the parties to this cause, the motion of the complainant for a preliminary injunction was heard by the judges of our said court.

And whereas, thereafter and on the 5th day of June, A. D. 1909, we did duly make and enter herein, our order wherein we were unanimous in the opinion that on May 4th, 1909, there did exist a through route for the transportation of passengers and the baggage of such passengers between the eastern and western points mentioned in said order, and that said existing route did then and still does conform to and satisfy that provision of the statute prescribing and limiting the duties and powers of the Interstate Commerce Commission in the premises, which reads, "provided no reasonable or satisfactory other route exists," and that by reason thereof, the said order of the Interstate Commerce Commission was erroneously and wrongfully made, and ought not to be enforced during the pendency of this suit.

And whereas, we did order that the said order of the said commission be suspended, and the said commission, its attorneys, agents, and employes be restrained and enjoined from enforcing said order, until the final hearing and decision in this cause, or further order of this court, which said order shall take effect and be enforced upon the filing with the clerk of this court, of a bond in the sum of fifty thousand (\$50,000.00) dollars, approved by one of the judges of this court, and conditioned that the Northern Pacific Railway Company will pay any and all damages which result from the making of said order in case the order shall not be sustained.

And whereas, on the 7th day of June, A. D. 1909, thereafter the said Northern Pacific Railway Company duly filed its bond for the said sum of fifty thousand (\$50,000.00) dollars duly approved by one of the judges of this court and conditioned as aforesaid.

Now therefore and in consideration thereof, and of the particular matters set forth in said bill and in said order, we do strictly command you, the Interstate Commerce Commission, to suspend your said order above referred to and that you, the said Interstate Commerce Commission, your attorneys, agents, and employes be and you are hereby restrained and enjoined from enforcing said order until the final hearing and decision of this cause, or until the further order of this court. Hereof fail not, under the penalty of what the law directs.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, this 9th day of June, 1909.

Issued at my office in the city of St. Paul, under the seal of said Circuit Court, the day and year last aforesaid.

[Seal of court.]

HENRY D. LANG, *Clerk*.

(Endorsed:) Original temporary injunction. Filed June 15th, 1909. Henry D. Lang, clerk.

Served certified copy of within temporary injunction on Interstate Commerce Commission by service on Edward A. Moseley, secretary, June 14, 1909.

AULICK PALMER,  
*Marshal, D. C.*

470 And thereafter, on the 1st day of July, 1909, the following assignment of errors was filed in said cause, to wit:

471 In the Circuit Court of the United States for the District of Minnesota.

NORTHERN PACIFIC RAILWAY COMPANY,	}
complainant,	
vs.	
INTERSTATE COMMERCE COMMISSION,	
defendant.	

*Assignment of errors.*

Now comes the Interstate Commerce Commission, by the Honorable Charles C. Houpt, United States attorney for the District of Minnesota, and Luther M. Walter, special assistant to the United States attorney, and charges that in the order and decree rendered by said Circuit Court for said district in the above-entitled cause on the fifth day of June, 1909, wherein and whereby said court suspended the order of the Interstate Commerce Commission, as therein shown, and restrained and enjoined the enforcement of the same, and in the record and proceedings therein, there is manifest error in its injury, in this, to wit:

1. Said Circuit Court erred in not dismissing the bill of complaint for want of equity.

2. Said Circuit Court erred in not dismissing complainant's bill for want of jurisdiction.

3. Said Circuit Court erred in holding that "On May 4, 1909, there did exist a through route for the transportation of passengers and baggage of such passengers between the eastern and western points mentioned in said order, and that said existing route did then and still does conform to and satisfy that provision of the statute prescribing and limiting the duties and powers of the Interstate Commerce Commission in the premises, which reads, 'provided no

472 reasonable or satisfactory through route exists,' and that by reason thereof the said order of the Interstate Commerce Commission was erroneously and wrongfully made and ought not to be enforced during the pendency of this suit."

4. Said Circuit Court erred in holding from the evidence produced at the hearing that said existing route did, on May 4, 1909, and still does conform to and satisfy that provision of the statute prescribing and limiting the duties and powers of the Interstate Commerce Commission in the premises, which reads, "Provided no reasonable or satisfactory through route exists," and that by reason thereof the said order of the Interstate Commerce Commission was erroneously and wrongfully made, and ought not to be enforced during the pendency of this suit.

5. Said Court erred in holding that the said order was erroneous, wrongfully made and ought not to be enforced during the pendency of this suit.

6. Said Circuit Court erred in holding that it had jurisdiction to determine, as a question of fact, whether the through route existing at the time of the making of the commission's order was reasonable and satisfactory.

7. Said Circuit Court erred in refusing to hold that the determination by the commission that no reasonable and satisfactory through route existed at the time of the making of the order was a determination of fact which is final and conclusive.

8. Said Circuit Court erred in holding that no different elements were to be considered in determining what was a reasonable and satisfactory through route in the case of passengers than in the case of freight.

9. Said Circuit Court erred in refusing to hold that the desire of a large body of the traveling public to use other than the existing through route via St. Paul is an important element to be considered in determining whether the existing through route is reasonable and satisfactory.

10. Said Circuit Court erred in refusing to hold that the traveling public is entitled to through routes and through checking of baggage, so long as the carriers receive reasonable compensation for the transportation.

11. Said Circuit Court erred in ordering that said order of the commission be suspended and its attorneys, agents, and employees be restrained and enjoined from enforcing the same until the final hearing and decision in this suit or the further order of this court.

12. Said Circuit Court erred in suspending and enjoining the enforcement of said order.

13. Said Circuit Court erred in not refusing the application of complainant herein for temporary injunction or preliminary restraining order.

Wherefore the Interstate Commerce Commission prays that the decree of said Circuit Court rendered on the fifth day of June, 1909, be reversed, and that said Circuit Court be ordered to enter a decree dismissing the petition or bill of complaint in the above-entitled cause by said complainant against said Interstate Commerce Commission.

CHAS. C. HOYT,  
*United States Attorney.*

LUTHER M. WALTER,  
*Special Assistant to the United States Attorney.*

(Endorsed:) Assignment of errors and prayer for reversal. Filed July 1st, 1909. Henry D. Lang, clerk.

Thereafter and on the same day the following petition for allowance of appeals was filed in said cause, to wit:

474 In the Circuit Court of the United States for the District of Minnesota.

NORTHERN PACIFIC RAILWAY COMPANY,  
complainant,

v.

INTERSTATE COMMERCE COMMISSION,  
defendant.

*Petition for appeal.*

The Interstate Commerce Commission, being a bureau or department of the Government of the United States, by the Honorable Charles C. Hought, United States attorney for the District of Minnesota, and Luther M. Walter, special assistant to the said United States attorney, being thereunto duly authorized, represents that in the decree or order of said Circuit Court in the above-stated case, rendered on the fifth day of June, 1909, there is manifest error to its injury, and therefore prays for an order granting an appeal from said decree to the Supreme Court of the United States.

CHAS. C. HOUGHT,  
*United States Attorney.*

LUTHER M. WALTER,

*Special Assistant to the United States Attorney.*

(Endorsed:) Petition for allowance of appeal. Filed July 1st, 1909. Henry D. Lang, clerk.

Thereafter and on July 1st, 1909, the following order allowing appeal was filed in said cause, to wit:

475 In the Circuit Court of the United States for the District of Minnesota,

NORTHERN PACIFIC RAILWAY COMPANY,  
complainant,

v.

INTERSTATE COMMERCE COMMISSION,  
defendant.

*Order allowing appeal.*

In this cause, the Interstate Commerce Commission, by the Honorable Charles C. Hought, United States attorney for the District of Minnesota, and Luther M. Walter, special assistant to the said United States attorney, thereunto duly authorized, having made its application in writing for an appeal from the decree therein, rendered on the fifth day of June, 1909, to the Supreme Court of the United States, and it appearing that the matter in dispute in said cause exceeds the sum of \$2,000, exclusive of costs, it is therefore ordered

that said appeal be, and the same is hereby, granted and made returnable on the 26th day of July, 1909.

WALTER H. SANBORN,  
*Circuit Judge.*

(Endorsed:) Order allowing appeal. Entered term minutes vol. 40, page 144. Filed July 1st, 1909. Henry D. Lang, clerk.

Thereafter and on the same day the following citation was issued out of and said court, which said citation was returned served by the marshal on the same day, viz:

476 In the Circuit Court of the United States for the District of Minnesota.

NORTHERN PACIFIC RAILWAY COMPANY,  
complainant,

v.

INTERSTATE COMMERCE COMMISSION,  
defendant.

*Citation on appeal.*

The United States of America, Eighth Judicial Circuit.

*The President of the United States to the Northern Pacific Railway Company or to C. W. Ryan, its solicitor of record, greeting:*

You are hereby cited and admonished to be and appear before the Supreme Court of the United States at Washington, D. C., within thirty days from the date hereof, pursuant to the appeal sued out and filed in the clerk's office in the United States Circuit Court for the District of Minnesota, in the cause wherein the Interstate Commerce Commission was defendant and said Northern Pacific Railway Company was complainant, to show cause, if any there be, why the decree rendered against the said Interstate Commerce Commission, as in said petition for appeal mentioned, should not be corrected and why speedy justice should not be done in that behalf.

Witness the Honorable Walter H. Sanborn, United States circuit judge for said Eighth Judicial Circuit, this first day of July in the year of our Lord one thousand nine hundred and nine.

WALTER H. SANBORN,  
*Circuit Judge.*

(Endorsed:) Citation on appeal. Filed July 1st, 1909. Henry D. Lang, clerk.

476½ Form No. 282. *Return on service of writ.*

UNITED STATES OF AMERICA,

*District of Minnesota, ss:*

I hereby certify and return that I served the annexed citation on appeal on the therein named N. P. R. R. Co. by handing to and leav-

ing a true and correct copy thereof with C. A. Clark, treasurer of the above-named company, personally, at St. Paul, in said district, on the 1st day of July, A. D. 1909.

WILLIAM H. GRIMSHAW,  
*U. S. Marshal.*

477 By GEO. W. WELLS, *Deputy.*  
And thereafter on the same day the following præcipe for a return to the U. S. Supreme Court was filed in said cause, to wit:

478 Circuit Court of the United States, District of Minnesota,  
Third Division.

NORTHERN PACIFIC RAILWAY COMPANY	} Præcipe for return on ap- peals to the U. S. Su- preme Court.
<i>vs.</i> THE INTERSTATE COMMERCE COMMISSION.	

*To the clerk of the above-named court:*

Please make a return upon the appeal to the U. S. Supreme Court and include therein all the files and records in this cause.

Dated St. Paul, Minnesota, July 1st, 1909.

CHAS. C. HOULT, *U. S. Atty.*  
LUTHER M. WALTER, *Atty.*  
*Complainant's solicitors.*

(Endorsed:) Præcipe for return upon appeal to the U. S. Supreme Court. Filed July 1st, 1909. Henry D. Lang, clerk.

479 UNITED STATES OF AMERICA.

Circuit Court of the United States, District of Minnesota, Third Division.

I, Henry D. Lang, clerk of said Circuit Court, do hereby certify and return to the honorable the Supreme Court of the United States that the foregoing, consisting of 479 pages, numbered consecutively from 1 to 479, inclusive, is a true and complete transcript of the records, process, pleadings, orders, injunctive decree, and all other proceedings in said cause relating thereto, and of the whole thereof, as appears from the original records and files of said court; and I do further certify and return that I have annexed to said transcript, and included within said paging, the original citation, together with the proof of service thereof.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at Saint Paul, in the District of Minnesota, this 16th day of July, A. D. 1909.

[SEAL.]

HENRY D. LANG,  
*Clerk.*

480 In the Supreme Court of the United States, October term,  
1909.

INTERSTATE COMMERCE COMMISSION,	}
appellant,	
<i>v.</i>	
NORTHERN PACIFIC RAILWAY COMPANY,	
appellee.	

*Stipulation.*

It is hereby stipulated and agreed by and between the parties hereto, that in the printing of the record herein the clerk may omit therefrom pages 62 to 78, inclusive, being the brief before the Interstate Commerce Commission of Albert H. Lossow; pages 79 to 106, being the brief before the commission of Charles W. Bunn; pages 107 to 178, inclusive, being the brief before the commission of F. C. Dillard et al.; and page 179, being a map showing the Northern Pacific Railway System and the Chicago, Burlington & Quincy Railroad.

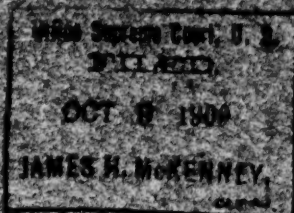
	LLOYD W. BOWERS,
	<i>Solicitor-General, Solicitor for Appellant.</i>
	CHARLES W. BUNN,
	<i>Solicitor for Appellee.</i>

481 (Indorsed:) File No. 21796. Supreme Court U. S., October term, 1909. Term No. 570. The Interstate Commerce Commission, app't, vs. Northern Pacific Railway Co. Stipulation to omit certain parts of the record in printing. Filed August 17th, 1909.

(Indorsement on cover:) File No. 21796. Minnesota C. C. U. S. Term No. 570. The Interstate Commerce Commission, appellant, vs. Northern Pacific Railway Company. Filed August 17th, 1909. File No. 21796.

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No. 570.

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*In the Supreme Court of the United States.*

OCTOBER TERM, 1909.

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THE INTERSTATE COMMERCE COMMISSION, APPELLANT,

v.

NORTHERN PACIFIC RAILWAY COMPANY, APPELLEE.

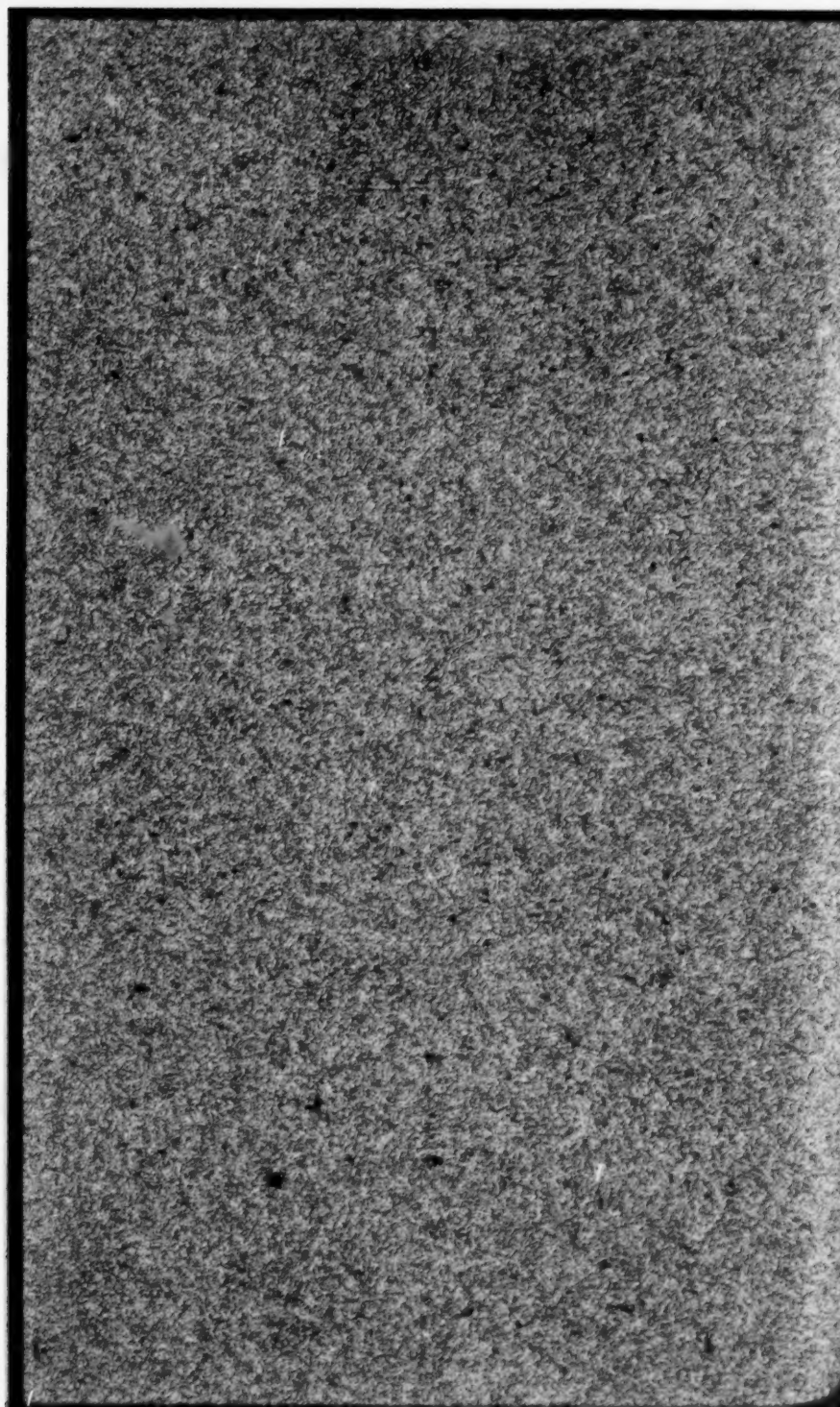
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APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE  
DISTRICT OF MINNESOTA.

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MOTION TO ADVANCE.

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# In the Supreme Court of the United States.

OCTOBER TERM, 1909.

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THE INTERSTATE COMMERCE COMMISSION,  
appellant,

v.

No. 570.

NORTHERN PACIFIC RAILWAY COMPANY,  
appellee.

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*APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE  
DISTRICT OF MINNESOTA.*

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## MOTION TO ADVANCE.

On behalf of appellant, the Solicitor-General respectfully moves the court to advance the above-entitled cause for hearing during the present term, for the following reasons:

I. The cause is a proceeding in equity, under section 16 of the act to regulate commerce, approved February 4, 1887, as amended June 29, 1906, brought by appellee in the Circuit Court of the United States for the District of Minnesota to enjoin the enforcement of an order of appellant against appellee and other corporations, common carriers engaged in interstate commerce, made under and by virtue of the provisions of said act.

II. Appellant, on May 4, 1909, after a hearing before it, instituted upon its own motion, made an order requiring the Northern Pacific Railway Company, the Chicago and Northwestern Railway Company, the Union Pacific Railroad Company, the Oregon Short Line Railroad Company, and the Oregon Railroad and Navigation Company to establish on or before July 1, 1909, and to maintain in force thereafter during a period of not less than two years, through routes and joint rates applicable thereto for the transportation of passengers and the baggage of such passengers, from Chicago, Ill., and other points on the Chicago and Northwestern Railway between Chicago and Council Bluffs, Iowa, including the latter point, and from points on the Union Pacific Railroad between Colorado common points on the west and Omaha, Nebr., and Kansas City, Mo., on the east, inclusive, via Portland, Oreg., to points in the State of Washington on the Northern Pacific Railway between said Portland and Seattle, Wash., including the latter point; said joint rates to be the same as the joint rates contemporaneously in effect between said points via the Northern Pacific Railway and its connections. The order also required joint through routes and rates in the reverse direction. On May 29, 1909, appellee herein filed its bill of complaint for an injunction against the appellant, to restrain the enforcement of said order. The Attorney-General having filed his certificate under the expediting act, the case came on for hearing

before the four circuit judges, on an application for a preliminary injunction, and after argument the Circuit Court enjoined the order of the commission on the ground that there existed, on May 4, 1909, a reasonable and satisfactory through route via the lines of other carriers, and that by reason thereof the order of the commission was erroneously and wrongfully made. From that order of the Circuit Court the commission appeals to this court.

III. A speedy determination of the commission's order requiring such joint through route and joint through rates for passengers and their baggage is a matter of great public importance, as about eight thousand passengers annually use the route over which the commission required through ticketing and checking of baggage.

IV. The act to regulate commerce, approved February 4, 1887, as amended June 29, 1906, in section 16, makes the provisions of "An act to expedite the hearing and determination of suits in equity," etc., approved February 11, 1903, applicable to all such suits; and said section provides that cases of this character shall have in this court "priority in hearing and determination over all other causes except criminal causes."

LLOYD W. BOWERS,  
*Solicitor-General.*

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No. 570

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In the Supreme Court of the United States

October Term, 1908

THE INTERSTATE COMMERCE COMMISSION,  
Appellant,

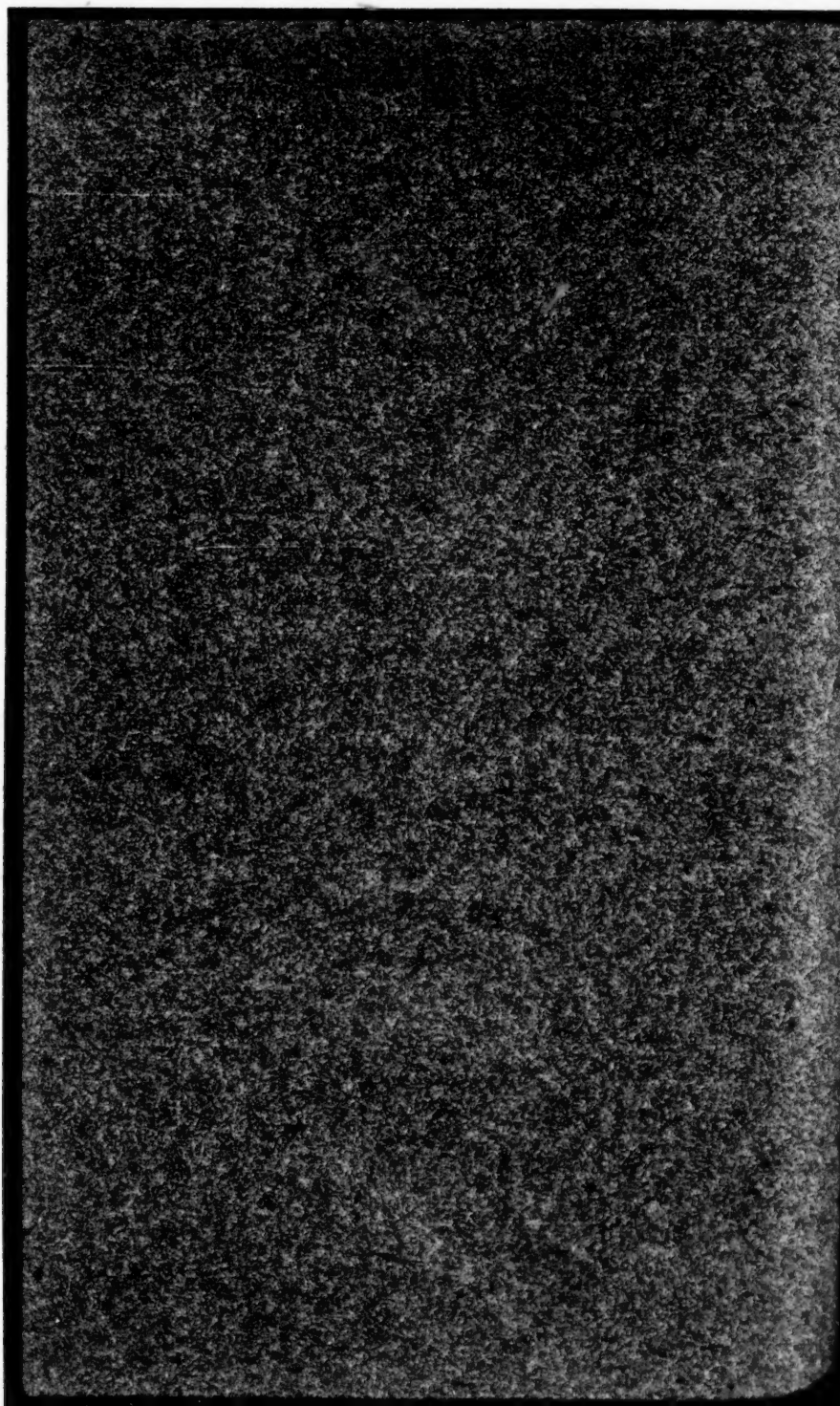
v.  
NORTHERN PACIFIC RAILWAY COMPANY,  
Appellee.

ON APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR  
THE DISTRICT OF MINNESOTA.

BRIEF FOR THE INTERSTATE COMMERCE COMMISSION

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# In the Supreme Court of the United States.

OCTOBER TERM, 1909.

THE INTERSTATE COMMERCE COMMISSION,  
appellant.

v.

NORTHERN PACIFIC RAILWAY COMPANY,  
appellee.

No. 570.

ON APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE  
DISTRICT OF MINNESOTA.

BRIEF FOR THE INTERSTATE COMMERCE COMMISSION.

## STATEMENT.

This case comes here upon appeal from the Circuit Court for the District of Minnesota.

The suit was brought by the railway company in the Circuit Court to restrain the enforcement of an order of the Interstate Commerce Commission which established a through route and a joint rate applicable thereto, for the transportation of passengers and the baggage of such passengers, from Chicago, Ill., and other points on the Chicago and Northwestern Railway between Chicago and Council Bluffs, Iowa, and from points on the Union Pacific Railroad between Colorado common points, so called, on the west,



and Omaha, Nebr., and Kansas City on the east, via Portland, Oreg., to points in the State of Washington, on the Northern Pacific Railway between Portland and Seattle, Wash.; the order of the Commission also directing the establishment of a through route and a joint rate in the opposite direction, viz., from said points on the Northern Pacific Railway, via Portland, Oreg., to said points on the Union Pacific Railroad, and to said points on the Chicago and Northwestern Railway, including Omaha, Nebr., Kansas City, Mo., and Chicago, Ill.

On motion for a preliminary injunction, the case came on for argument before the four circuit judges of the Eighth Circuit under the expediting act (32 Stat., 823). (Record, pp. 21 and 149.)

The report and order of the Commission and the stenographer's minutes of the proceedings before that body were filed as exhibits at the time of the argument. (Record, p. 22.) Thereafter the four judges entered an order granting an injunction, pendente lite, conditioned on the filing of a bond by the Northern Pacific Railway Company. (Record, p. 149.) This condition having been complied with, a temporary injunction was entered, restraining and enjoining the enforcement of the order of the Commission. (Record, p. 153.)

The circuit judges filed no opinion, but stated in the order granting the injunction that they were unanimously of the opinion that at the time of the issuance of the order of the Commission "there did exist a through route for the transportation of pas-

sengers and the baggage of such passengers between the eastern and western points mentioned in said order, and that said existing route did then and still does conform to and satisfy that provision of the statute prescribing and limiting the duties and powers of the Interstate Commerce Commission in the premises, which reads 'provided no reasonable or satisfactory through route exists,' and that by reason thereof the said order of the Interstate Commerce Commission was erroneously and wrongfully made and ought not to be enforced during the pendency of this suit." (Record, p. 150.)

From the decree granting the temporary injunction the Commission appealed to this court. Authority to appeal from a temporary injunction is expressly granted in section 16 of the interstate-commerce act as amended by the Hepburn Act of June 29, 1906 (34 Stat., 584, 592).

The provisions of the Hepburn Act relating to through routes and joint rates are as follows:

SECTION 1. \* \* \* and it shall be the duty of every carrier subject to the provisions of this act to provide and furnish such transportation, upon reasonable request therefor, *and to establish through routes and just and reasonable rates applicable thereto.*

SEC. 15. \* \* \* The Commission may also, after hearing on a complaint, establish through routes and joint rates as the maximum to be charged, and prescribe the division of such rates as hereinbefore provided, and the

terms and conditions under which such through routes shall be operated when that may be necessary to give effect to any provision of this act, and the carriers complained of have refused or neglected to voluntarily establish such through routes and joint rates, provided no reasonable or satisfactory through route exists, and this provision shall apply when one of the connecting carriers is a water line. \* \* \*

The foregoing enumeration of powers shall not exclude any power which the Commission would otherwise have in the making of an order under the provisions of this act.

#### THE ACT OF THE COMMISSION.

This case originated in a proceeding by the Interstate Commerce Commission on its own motion to determine whether Portland, Oreg., should be opened as a gateway for passengers to and from Puget Sound points on the Northern Pacific Railway. The following railroads were called upon to show cause why the gateway should not be opened: The Northern Pacific Railway Company, Chicago and Northwestern Railway Company, the Union Pacific Railroad Company, Oregon Short Line Railroad Company, and Oregon Railroad and Navigation Company. The three railroads last mentioned cast their answers in the form of a complaint, which was duly served, praying the opening of the gateway by the Commission, and giving their reasons therefor.

No question was raised before the Commission or in the circuit court as to the power of the Commission to institute the proceedings on its own motion.

Moreover all the parties appeared before the Commission with counsel, and introduced evidence in favor of or against the opening of the route. Therefore it is clear that the proceeding before the Commission was conducted as if the matter had originated upon the submission of a complaint to that body.

The object of the inquiry was to determine whether or not the Northern Pacific Railway Company was justified in refusing to make through routes with the Union Pacific Railroad Company over that branch line of the Northern Pacific Railway Company which extends from Portland, Oreg., to Seattle. A map is printed in the record opposite page 34, showing the lines of the several railroad companies and the different routes under consideration.

The effect of the action of the Northern Pacific Railway will be more clearly understood if a Puget Sound point—for instance, Tacoma—be taken as illustrative of the points in the Northwest which are involved. The Northern Pacific Railroad extends from St. Paul to Seattle, and it also operates a line from Seattle southward through Tacoma to Portland. Numerous lines of railroad lead from Chicago to St. Paul.

The Union Pacific lines extend from Omaha, Kansas City, and other Missouri River points to Portland, but there is no Union Pacific extension from Portland northward to Tacoma and Seattle. Various other lines connect Chicago and Omaha.

The Chicago, Burlington and Quincy Railroad, which is owned and controlled jointly by the Northern

Pacific and the Great Northern, runs from Omaha, Kansas City, and other Missouri River points to Billings, Mont., where it connects with the Northern Pacific.

Passengers at the Missouri River, therefore, may travel to Tacoma either via the Burlington route to Billings and thence via the Northern Pacific, or they may travel via the Union Pacific lines to Portland and thence via the Northern Pacific from Portland to Tacoma.

Passengers at Chicago may travel to Tacoma by any one of a number of lines to St. Paul, and thence by the Northern Pacific, or they may make a selection of one of a number of roads to Omaha, and then continue from Omaha making another choice from a number of roads to Ogden, and thence via the Union Pacific lines to Portland. From Portland the Northern Pacific lines must be taken to Tacoma.

The distance between Portland and Tacoma is 140 miles; from St. Paul to Tacoma is 1,900 miles, and from Billings to Tacoma about 1,000 miles.

Practically all passenger traffic to Puget Sound points from territory east of the Missouri River passes through Chicago or Missouri River points, and therefore the points above selected fairly illustrate the general situation and the questions presented.

The possible routes for passengers traveling from Puget Sound points eastward to Missouri River points or Chicago are the same as those described above, going the other way.

The desire to obtain for itself as much of the travel to Puget Sound points as possible impelled the Northern Pacific Railway to adopt the practice complained of, and which resulted in the submission of many complaints and petitions to the Commission. (Record, p. 11.)

That practice may be briefly described by stating that the Northern Pacific refused to concur with the Union Pacific in establishing joint through routes via Portland to Tacoma, and it refused to concur in joint through routes over other lines where part of the route was over the Union Pacific, and thus deprived the Northern Pacific of the long haul. All passengers going to Puget Sound points from the points above described that is, from Chicago, Missouri River points, and points as far west of the Missouri as Colorado common points— who selected a route other than the route which gave the Northern Pacific the longest haul, were deprived of the advantages of through tickets. For instance, the Northern Pacific concurred with the Chicago, Burlington and Quincy in a joint through route from the Missouri River points via Billings to Tacoma, but it refused to concur with the Union Pacific in a through route from Omaha or Kansas City via the Union Pacific to Portland and thence via the Northern Pacific to Tacoma.

The refusal to join in through passenger routes extended to the transportation of baggage, the Northern Pacific declining to check the baggage through where it refused to join in a through ticket.

The effect of this action of the Northern Pacific was to compel all passengers traveling from the east through Portland to Puget Sound points by the Union Pacific to stop at Portland, buy another ticket, and recheck their baggage. It necessitated also a change of Pullman accommodations and the payment of an additional Pullman fare. On the other hand, a passenger from St. Paul over the Northern Pacific or from Missouri River points over the Chicago, Burlington and Quincy to Billings was able to buy a through ticket to Tacoma and check his baggage through.

It should be observed that the proceeding before the Commission related to one-way traffic only. As to round trips, the Northern Pacific concurred with the Union Pacific and the other routes when the ticket was bought in the East, but when the ticket was bought in the West—that is, at Puget Sound points—it refused to concur. This case, however, concerns only one-way transportation.

After taking the testimony of many witnesses who testified to the demand for another through route the Commission filed an opinion, which appears in the record on page 3, and an order which appears on page 11.

The Commission recognized that it has no authority to establish a through route when a reasonable and satisfactory route already exists, but it made a finding of fact that the through routes from Chicago and Missouri River points to Puget Sound points over the lines of the Northern Pacific and the Chicago, Bur-

lington and Quincy were not satisfactory and reasonable routes as far as passenger traffic was concerned.

It said (Record, p. 9):

We are of the opinion and find that a substantial part of those actually making the journey between these points in the Northwest and various points in the East to the east of Colorado common points prefer to travel via the lines which lead finally through the Portland gateway. We are of the opinion that the desire of this portion of the public to use those routes is a reasonable one, and therefore that the northern route offered by the Northern Pacific is not, within the contemplation of the statute, and as to such travelers, a reasonable or satisfactory through route.

This finding of fact that the Northern Pacific route was not reasonable and satisfactory depended in large measure upon the decision of the Commission that in determining whether a particular *passenger* route is reasonable or satisfactory, the personal preference of a large part of the traveling public is an important element, entitled to serious consideration. It said, however, that personal preference is a factor to be considered only when a passenger route is under consideration, pointing out that on the same facts it had refused to open the Portland gateway to freight traffic, and it could be no hardship upon the railroad to open the gateway to passenger traffic. It said (Record, p. 12):

This Commission has held that with respect to freight business the Northern Pacific and



the Great Northern may absolutely control all territory east of and including Colorado common points. It is no hardship to say that with respect to passenger business the Northern Pacific must open its lines to this transcontinental travel.

The Commission directed that the through rate via Portland should be the same as the through rate via the Northern Pacific, but it expressed no opinion respecting the division of those rates, this question not being presented. (Record, p. 12.)

The Commission entered the following order (Record, p. 14):

It is ordered, that the Chicago and Northwestern Railway Company, the Union Pacific Railroad Company, the Oregon Short Line Railroad Company, the Oregon Railroad and Navigation Company, and the Northern Pacific Railway Company be, and they are hereby, notified and required to establish on or before July 1, 1909, and maintain in force thereafter, during a period of not less than two years, through routes and joint rates applicable thereto for the transportation of passengers and the baggage of such passengers from Chicago, Ill., and other points on the Chicago and Northwestern Railway between Chicago and Council Bluffs, Iowa, including the latter point, and from points on the Union Pacific Railroad between Colorado common points, so called, on the west and Omaha, Nebr., and Kansas City, Mo., on the east, including the latter two points, via Portland, Oreg., to points in the State of Washington, on

the Northern Pacific Railway between said Portland and Seattle, Wash., including the latter point; said joint rates to be the same as the joint rates contemporaneously in effect between said points via the Northern Pacific Railway and its present connections.

It is further ordered, that the carriers named in paragraph 2 of this order be, and they are hereby, notified and required to establish on or before said July 1, and maintain in force thereafter during a period of not less than two years, through routes and joint rates applicable thereto, for the transportation of passengers and the baggage of such passengers, from said points on the Northern Pacific Railway via Portland, Oreg., to said points on the Union Pacific Railroad, and to said points on the Chicago and Northwestern Railway, including Omaha, Nebr., Kansas City, Mo., and Chicago, Ill., said joint rates to be the same as the joint rates contemporaneously in effect between said points via the Northern Pacific Railway and its present connections.

#### CONTENTIONS OF THE RAILROADS.

The Northern Pacific Railway Company thereupon filed a bill of complaint in the Circuit Court in the District of Minnesota to set aside and annul the order of the Commission. The complaint sets out the report and order of the Commission, and alleges that the number of passengers traveling over its lines to Puget Sound points will be materially decreased and its revenue thereby greatly diminished by establishing a joint through route via Portland. It asserts that it was shown in the testimony and admitted in

the Commission's opinion that the route via the Northern Pacific in point of service, and in so far as concerns the transportation itself, is superior to the route through Portland, and that the considerable number of passengers who prefer the route through Portland base such preference wholly upon their wish to stop over at Portland or in the country tributary to the Northern Pacific lines before reaching Portland, for business or pleasure, or their desire to see the country tributary to those lines. The complainant prayed that a decree be entered setting aside and annulling the order of the Commission and perpetually enjoining the enforcement thereof.

As exhibits to the bill of complaint the railroad filed a copy of the testimony taken before the Commission. No testimony was taken in the Circuit Court by way of affidavits or otherwise. The case came on for hearing on a motion for a preliminary injunction.

The four judges of the Circuit Court entered an order (Record, p. 149) reciting the fact that the Commission had issued the order complained of, and continuing (Record, p. 150):

And whereas, after due consideration of the evidence presented upon the hearing before said circuit judges, they are unanimous in the opinion that on May 4, 1909, there did exist a through route for the transportation of passengers and the baggage of such passengers between the eastern and western points mentioned in said order, and that said existing route did then and still does con-

form to and satisfy that provision of the statute prescribing and limiting the duties and powers of the Interstate Commerce Commission in the premises, which reads, "provided no reasonable or satisfactory through route exists," and that by reason thereof the said order of the Interstate Commerce Commission was erroneously and wrongfully made and ought not to be enforced during the pendency of this suit;

It is hereby ordered that the said order of the said Commission be and the same is suspended, and the said Commission, its attorneys, agents, and employees are hereby restrained and enjoined from enforcing said order until the final hearing and decision in this suit, or the further order of this court.

From the preliminary injunction issued pursuant to the above-mentioned order the Commission appeals to this court.

#### ASSIGNMENT OF ERRORS.

The following are the assignment of errors which will be urged in this brief (Record, p. 155):

1. The Circuit Court erred in not dismissing the bill of complaint for want of equity.
2. Said Court erred in not dismissing the bill for want of jurisdiction.
3. Said Circuit Court erred in holding that "On May 1, 1909, there did exist a through route for the transportation of passengers and baggage of such passengers between the eastern and western points mentioned in said order, and that said existing route did then and still does conform to and satisfy that pro-

vision of the statute prescribing and limiting the duties and powers of the Interstate Commerce Commission in the premises, which reads 'provided no reasonable or satisfactory through route exists,' and that by reason thereof the said order of the Interstate Commerce Commission was erroneously and wrongfully made and ought not to be enforced during the pendency of this suit."

4. Said Circuit Court erred in holding, from the evidence produced at the hearing, that said existing route did, on May 4, 1909, and still does, conform to and satisfy that provision of the statute prescribing and limiting the duties and powers of the Interstate Commerce Commission in the premises, which reads, "Provided no reasonable or satisfactory through route exists," and that by reason thereof the said order of the Interstate Commerce Commission was erroneously and wrongfully made and ought not to be enforced during the pendency of this suit.

5. Said Circuit Court erred in holding that the said order was erroneously and wrongfully made and ought not to be enforced during the pendency of this suit.

6. Said Circuit Court erred in holding that it had jurisdiction to determine, as a question of fact, whether the through route existing at the time of the making of the Commission's order was reasonable and satisfactory.

7. Said Circuit Court erred in refusing to hold that the determination by the Commission that no reasonable and satisfactory

through route existed at the time of the making of the order was a determination of fact which is final and conclusive.

8. Said Circuit Court erred in holding that no different elements were to be considered in determining what was a reasonable and satisfactory through route in the case of passengers than in the case of freight.

9. Said Circuit Court erred in refusing to hold that the desire of a large body of the traveling public to use other than the existing through route via St. Paul is an important element to be considered in determining whether the existing through route is reasonable and satisfactory.

10. Said Circuit Court erred in refusing to hold that the traveling public is entitled to through routes and through checking of baggage so long as the carriers receive reasonable compensation for the transportation.

11. Said Circuit Court erred in ordering that said order of the Commission be suspended and its attorneys, agents, and employees be restrained and enjoined from enforcing the same until the final hearing and decision in this suit or the further order of this court.

12. Said Circuit Court erred in suspending and enjoining the enforcement of said order.

13. Said Circuit Court erred in not refusing the application of complainant herein for temporary injunction or preliminary restraining order.

## ARGUMENT.

## I.

The order of the Commission can not be set aside by the court merely for the reason that the court, if placed in the position of the Commission, would not have ordered the through route.

The provisions of the Hepburn Act relating to through routes and joint rates applicable thereto are as follows:

SEC. 1. \* \* \* and it shall be the duty of every carrier subject to the provisions of this act to provide and furnish such transportation upon reasonable request therefor, and to establish through routes and just and reasonable rates applicable thereto.

SEC. 15. \* \* \* The Commission may also, after hearing on a complaint, establish through routes and joint rates as the maximum to be charged and prescribe the division of such rates as hereinbefore provided, and the terms and conditions under which such through routes shall be operated, when that may be necessary to give effect to any provision of this act, and the carriers complained of have refused or neglected to voluntarily establish such through routes and joint rates, *provided no reasonable or satisfactory through route exists*, and this provision shall apply when one of the connecting carriers is a water line.

The decision in this case turns upon the meaning of the phrase "provided no reasonable or satisfactory through route exists." We contend that this clause gives the Commission the power to establish

a through route, provided *in the opinion of the Commission* no satisfactory or reasonable through route exists. In other words, the determination of the question whether or not a through route already in existence is reasonable or satisfactory rests with the Commission. If the Commission finds as a fact that a certain through route is not reasonable or satisfactory, it may then proceed to order another through route.

This construction of the phrase is in accord with the language conferring the rate-making power upon the Commission used in the first paragraph of section 15, of which section the provision relating to the establishment of through routes is the second paragraph. The first paragraph provides that the Commission is empowered, "*whenever it shall be of the opinion that any of the rates or practices of a common carrier are unjust or unreasonable, or unjustly discriminatory, or unduly preferential or prejudicial, or otherwise in violation of any of the provisions of the act, to determine and prescribe what will be the just and reasonable rate to be observed as the maximum to be charged, or what practice is just, fair, and reasonable to be thereafter followed.*" After the Commission has made the finding of fact that the rate or practice inquired into by it is unreasonable, it has the power to prescribe what rate the carrier shall charge and also to direct the carrier to refrain from the practice which it has found to be unreasonable.

Read in the light of these earlier provisions of the section respecting the finding of a fact by the Commis-



sion as a prerequisite to the exercise by it of its legislative power to establish a rate or to direct that a railroad conform to a certain practice, the meaning of the phrase used in the second paragraph, "provided no reasonable or satisfactory through route exists," is clear. It means that before the Commission can act it must find the existing route unreasonable, just as before it can order a new rate it must find the existing rate unreasonable. It is a limitation of power only in the sense that the requirement that there be a finding that an existing rate or practice is unreasonable or discriminatory is a limitation of power. If in the opinion of the Commission an existing rate is unreasonable or discriminatory, it may order a new rate; similarly if in the opinion of the Commission an existing through route is not satisfactory or reasonable it may establish another through route.

The procedure before the Commission respecting the establishment of through routes is similar to the procedure when that body is considering rates and practices. There is a hearing on a complaint; then, upon the evidence introduced, there is a determination of a question of fact respecting a route in existence, just as when the proceeding is in regard to rates there is a determination of a question of fact respecting the rate or practice complained of.

In regard to the first paragraph of section 15, the court has no power to review the proceedings by which the Commission has arrived at a finding of fact that the rate or practice complained of is un-

reasonable, or to decide that the Commission committed errors of law in considering or not considering certain facts.

Under the recent decision of this court in *Interstate Commerce Commission v. Illinois Central Railroad*, decided January 10, 1910, the courts are without authority to set aside an order of the Commission merely for the reason that the court may deem the order inexpedient, or, if placed in the position of the Commission, would not have made the order complained of. On this point it is only necessary to quote briefly from the opinion of Mr. Justice White, who said that there was no support whatever for the proposition that—

we may, under the guise of exerting judicial power, usurp merely administrative functions by setting aside a lawful administrative order upon our conception as to whether the administrative power has been wisely exercised. Power to make the order, and not the mere expediency or wisdom of having made it, is the question.

At the close of his opinion, after stating certain arguments urged by the defendant railroad, Mr. Justice White continued:

Indeed, the arguments just stated, and others of like character which we do not deem it essential to specially refer to, but assail the wisdom of Congress in conferring upon the Commission the power which has been lodged in that body to consider complaints as to

violations of the statute and to correct them if found to exist, or attack as crude or inexpedient the action of the Commission in performance of the administrative functions vested in it, and upon such assumption invoke the exercise of unwarranted judicial power to correct the assumed evils.

The only question, then, is whether the administrative order is within the scope of the authority conferred by section 15, under which the order was made. A decision to the effect that the phrase under consideration is a limitation upon the power of the Commission in the sense contended for by the appellee would be to frustrate the purpose which it is clear the provision was designed to accomplish. It would vest in the judiciary the authority to determine in each case in which the Commission attempted to use its route-making power whether, under the circumstances, the Commission had acted wisely. In each case the court would have to determine whether or not the existing route was reasonable or satisfactory, and upon this question examine into all the proceedings and evidence before the Commission and arrive at a conclusion independently of the decision by that body.

In the Illinois Central case an attempt was made to limit the power of the Commission by the argument that the words in section 15, "affecting such rates," qualified the regulations or practices in respect to which the Commission might issue an order. It had been urged that the Commission had no authority to

issue an order regarding any regulation or practice which did not affect a rate already under consideration by the Commission. The court dismissed that argument, saying:

To adopt it would require us to hold that Congress, in enlarging the power of the Commission over rates, had so drafted the amendment as to cripple and paralyze its power in correcting abuses as to preferences and discriminations which, as this court has hitherto pointed out, it was the great and fundamental purpose of Congress to further.

This language of Mr. Justice White is equally applicable to the interpretation placed by the appellee upon the phrase in the second paragraph of the same section: "provided no reasonable or satisfactory through route exists." To accord to that phrase the construction placed upon it by the Northern Pacific, is to hold that in each case it is for the court to determine whether the existing route is satisfactory or reasonable before the Commission can act in the premises, and would "cripple and paralyze" the power of the Commission to establish through routes for the benefit of the public.

It was urged by counsel for appellees in the court below and also before the Commission that the debates of Congress indicate an intent on the part of that body to give the Commission no power to establish a through route where a reasonable and satisfactory through route already exists. Our argument is that the determination of the question of fact rests

with the Commission, and not with the court. Nothing can be found in the debates to indicate that it was intended by Congress that the courts should have the authority to answer the question.

Congressional Record, vol. 40, part 3, pages 2244, 3115; vol. 40, part 6, pages 6678, 6679, 6681.

## II.

**In determining whether an existing passenger route is reasonable and satisfactory, the first inquiry necessarily must be whether that route fairly meets the requirements of the traveling public. In this case the facts show that the public interests demanded the establishment of another through route to Puget Sound points via the Portland gateway.**

The authority of the Interstate Commerce Commission to establish through routes rests entirely upon the provisions of the Hepburn Act above quoted. Prior to the enactment of that law, the Commission had no power to order the establishment of through routes or joint rates.

*Southern Pacific Co. v. Interstate Commerce Commission*, 200 U. S., 536.

*O. S. L. R. R., etc., v. N. P. Ry. Co.* (51 Fed., 465, and 61 Fed., 158).

*K. and I. Bridge Co. v. L. and N. R. R. Co.* (37 Fed., 565).

*Little Rock and Memphis Ry. Co. v. St. Louis, I. M. and So. Ry. Co.* (41 Fed., 559; 59 Fed., 400, and 63 Fed., 975).

*A. C. and S. F. Ry. Co. v. Miami Steamship Co.* (86 Fed., 407).

From the provisions of the statute quoted above it is evident that Congress intended: First, to impose upon the common carrier the duty of establishing through routes and just and reasonable rates applicable thereto; second, to give the Commission a discretionary power in the ordering of through routes, for the statute does not declare that the Commission *shall*, but rather *may*, after hearing on a complaint, establish through routes; third, to subject the exercise of this discretionary authority to the qualification that no through route shall be established when a reasonable and satisfactory through route already exists.

Therefore, even assuming the courts have any power in the premises, the question in this case resolves itself into the determination of a fact, namely, whether or not, under the circumstances set out in the record, a reasonable or satisfactory through route existed at the time of the order of the Commission.

In determining this question of fact, the Commission properly said that inasmuch as the route which it was considering was a route for passengers, it should take into consideration the reasonable personal preferences of a large body of the traveling public. The mere fact that the through route which already existed afforded a fairly comfortable and quick passage was not sufficient. More than 8,000 persons a year traveling for pleasure or to acquire new homes desire to go by the southern route, and for them the northern route is neither reasonable nor satisfactory. The southern route in distance

is only slightly farther than the northern route. From Chicago via St. Paul to Tacoma the distance is 2,319 miles, while via Omaha and Portland it is 2,436 miles. From Omaha via Billings the distance is 1,909, and via Portland 1,943 miles (Record, p. 6). Therefore the passenger who prefers the Union Pacific route is not unreasonable, for he is selecting a route which is about as short as any other.

It is to be remembered as of prime importance in this case that the question which we are considering relates to passenger routes only, and furthermore, that the Commission itself, in a prior hearing and determination, had decided that it would not open the Portland gateway to freight traffic. It had held that as far as freight was concerned, originating at Puget Sound points or consigned thereto, the route via the Northern Pacific was sufficient and satisfactory. The Commission in that case, however, said that in determining what is a reasonable or satisfactory route for passengers, facts must be considered which are not relevant or material in determining what is a reasonable and satisfactory route for freight.

To repeat, the sole question in this case, if the court is to consider the wisdom or expediency of the Commission's order, is whether a reasonable and satisfactory route already existed. The Commission held that no reasonable or satisfactory route existed. The Circuit Court found directly to the contrary.

The courts have not been called upon in other cases to construe the particular provisions of the Hepburn Act now under consideration. The Commis-

sion, however, in a number of well-considered opinions, has had occasion to determine whether it should exercise its route-making power, and in some cases it has established through routes and in other instances it has refused to establish them. In no other case has its decision been taken to the courts for review.

A brief summary of the cases in which the Commission has construed the provisions of the Hepburn Act referring to through routes will be useful, as indicating the rules by which the Commission has been influenced in establishing or refusing through routes, and the Commission's opinion of the extent of its authority.

The Commission has repeatedly stated that in each case the first consideration must be whether or not the proposed through route is in the interest of the public. Before there can be any exercise of the power of the Commission, this question must be answered in the affirmative, irrespective of the question whether another through route already exists.

If another route is already in force, the Commission considers whether that route sufficiently serves the interests of the public. This question must be answered in the negative before the Commission will grant a new route.

The Commission has frequently held that it will not order a through route when the public interests do not require it or when the carrier requesting the new route is doing so merely for the purpose of entering into a territory already built up by another carrier. On the other hand, where the interests of the



public do demand it, the Commission will not hesitate to grant a through route even though its action should diminish the business of one of the carriers. In other words, the question of the interests of the public is always the question of prime importance, and the Commission will neither build up nor tear down the business of competing carriers. It will not take part in their rivalry to gain the traffic of each other.

The first case in which the Commission considered the amendments of the Hepburn Act was that of the *Enterprise Transportation Company v. Pennsylvania Railroad Company et al.* (12 I. C. C., 326). In that case the Commission held that an intermittent through service from Jamestown, R. I., to Philadelphia, afforded by the New England Navigation Company and the Pennsylvania Railroad was not a satisfactory through route, and therefore it directed the defendant to join with the complainant in a through route. In discussing the language of the fifteenth section, the Commission said, page 332:

It seems plain that the intention of the statute was to confer upon this body certain discretionary power under which it might inquire *whether in the interests of the public* the through route asked for ought to be established.

And on page 333:

*The kind of a through route which will divest the Commission of its jurisdiction in this particular must be as beneficial to the public as the route which the Commission may otherwise establish.*

In *Loup Creek Colliery Company v. Virginian Ry. Co.* (12 I. C. C., 471), the Commission refused to establish a through route, and said that the law does not require the Commission to establish one in all cases where no through routes and joint rates exist, but only empowers it to do so in proper cases, continuing (p. 477):

Where neither the interest of the public nor the ends of justice as between parties directly interested will be promoted by the establishment of through routes and joint rates and divisions thereof, a proper case for the exercise of the authority invoked has not been shown.

In *Chicago and Milwaukee Electric Ry. Co. v. Illinois Central R. R. Co. and others* (13 I. C. C., 20) the Commission, in refusing to establish a through route, held that the power conferred upon it was not intended to afford a means by which new lines, with the aid of the Commission, may profitably force their way into the shipping districts built up and already well served by older lines, and thus seize and divide with the latter such traffic as may be offered for movement; but rather the purpose of the act was to afford relief to shipping communities, and not to aid carriers to acquire strategic advantages in their contests with one another. The Commission said that the proper solution of the question whether a reasonable or satisfactory route already exists must depend upon the special facts and circumstances of each case, and upon the transportation requirements of the particular community involved.

In that case, the Commission refused to establish a through route, for the reason that the line applying for the same was parallel to a road upon which there already existed a through route; in fact, there was no point upon the line of the complainant which was not within a mile or two of some station from which the public could obtain through service on the line of the competing railroad.

On the other hand, in *Cedar Rapids and Iowa City Railway and Light Co. v. Chicago and Northwestern Railway* (13 I. C. C., 250), the Commission directed the establishment of a through route from and to points between Coralville, Iowa, and Cedar Rapids, Iowa, to Chicago and other points reached by the defendant. The complainant was an electric railroad operating from Cedar Rapids, Iowa, to Iowa City, in the same State, a distance of about 27½ miles. On the facts the Commission found that the points on the complainant's lines between Coralville and Cedar Rapids were distances of from 5 to 40 miles from stations on an older and parallel competing line which gave through service to Chicago. The Commission decided that shippers should not be required to make such long drives for cattle and long wagon hauls for farm products produced in the immediate vicinity of complainant's line to these railroad points when it was possible for them to have service close at hand on the complaining line.

*Cardiff Coal Company v. Chicago, Milwaukee and St. Paul Railway Company et al.* (13 I. C. C., 460) is an important case. There the Commission held that

an interstate carrier, in order to build up enterprises on its own line, and to prevent the trade of its local industries from being displaced by the competition of manufacturers of the same commodities on connecting lines, can not deny to industries on the lines of such connections the benefit of through routes and joint rates, and the fact that the revenue of the carrier may be reduced by establishing such through routes and joint rates is not a material consideration.

The Commission examined the question whether the joint routes existing over other lines than defendants were satisfactory, and it held that they were not, for the reason that those through routes did not enable the complainant to make the sales which it could make if the desired route was put into effect.

In *Stedman & Sons v. Chicago Northwestern Ry. Company et al.* (13 I. C. C., 167) the Commission refused to establish a through route, holding that the three or four routes already in operation were satisfactory.

In *Pacific Coast Lumber Manufacturer's Association v. Northern Pacific Ry. Co. et al.* (14 I. C. C., 51) the Commission was considering the opening of the Portland gateway to lumber cut in western Washington and shipped to the East. The facts regarding the relative merits of the two routes were practically the same as in the case at bar. Taking Tacoma as a typical western point, the Commission showed that the route on the Northern Pacific via Billings to Kansas City and points east was somewhat less in distance than the route via Portland and the Union

Pacific. The Commission said that "distance is an important element in determining whether a route is satisfactory." Accordingly the Commission refused to establish through routes to Missouri River points and farther east.

On the other hand, applying the same test, the Commission held that a through route should be established to Utah points, of which Ogden and Salt Lake City were illustrations, because the route via the Northern Pacific or the Great Northern to those points was much longer than the route via the Union Pacific and Portland.

The Commission evidently anticipated the present proceeding to establish a through route for passengers, for it expressly called attention to the fact that what may be a reasonable through route for freight is not necessarily a reasonable through route for passengers, saying (p. 59):

Attention should be called to the fact that a wide difference exists between a reasonable through route for the movement of freight and one for passenger traffic. There enters into the passenger service a personal element which does not exist in the case of property. We might well say that a passenger should have the right to journey from Seattle to Omaha via Portland with the conveniences of a through service, although a carload of lumber was not entitled to that privilege.

In *Star Grain and Lumber Co. v. A. T. and S. F. Ry. Co. et al.* (14 I. C. C., 364) the Commission held that a carrier has no right by refusing through routes

to restrict to merchants the opportunity to buy in a widely extended market, and is not justified in refusing traffic from points on other lines on the ground that such traffic would displace in the markets traffic from points on its own lines, and thus adversely affect its revenues. Referring to the authority of the Commission to establish through routes, Commissioner Harlan said (p. 367):

This authority, it may be assumed, was not intended to be exercised upon light or unsubstantial grounds, or merely to satisfy the whims or fancies of shippers in seeking unusual markets in which to purchase their supplies.

In the case of the *Chamber of Commerce of the City of Milwaukee v. Chicago, Rock Island and Pacific Railway Co., et al.* (15 I. C. C., 460), the principal defendant attempted to divert shipments of corn, rye, etc., from Milwaukee to Chicago by refusing to allow through routes to Milwaukee, but allowing the same to Chicago. It alleged that Chicago afforded as good a market for grain as did Milwaukee, its object being to have the long haul to Chicago over its own rails. The Commission held that the carrier has no right to insist that a shipment shall go to a certain market if the shipper prefers another market, citing the *Cardiff Coal case* (13 I. C. C., 467).

These cases illustrate the manner in which the Commission has approached the question of the exercise of its route-making power. The principles established by them can not be questioned. Similarly, in the case at bar, the Commission did not

order a through route on light or unsubstantial grounds, or merely to satisfy the whims or fancies of a small portion of the traveling public. There was a real necessity for another through route, and to meet this demand the Commission directed its establishment.

The decisions above cited (p. 22), which held that prior to the Hepburn Act the Commission had no power to establish through routes, frequently referred to the English statute, with the comment that a similar provision was necessary in our railway act. The English act was passed in 1873; the part relating to establishing joint rates and through routes is contained in section 11 of that act, which amended section 2 of the act of 1854, "For the better regulation of traffic on railways and canals." Section 11 is similar to the amendment to section 1 effected by the Hepburn Act (*supra*, page 3) in that it imposes a duty upon the carrier of establishing through routes. Section 11 provides that the facilities to be afforded shall include a due and reasonable receiving, forwarding, and delivering by every railway company and canal company, at the request of any other such company, of through traffic to and from the railway or canal of any other such company at through rates. Subdivision 5 of the section is similar to the clause contained in section 15 of the Hepburn Act (*supra*, page 3) in that it prescribes the powers of the Commission. Subdivision 5 of section 11 provides:

If an objection be made to the granting of the rate or to the route, the Commission shall

consider whether the granting of the rate is a due and reasonable facility in the interests of the public, and whether, having regard to the circumstances, the route proposed is a reasonable route, and shall allow or refuse the rate accordingly. (36 and 37 Victoria, chapter 48, July 31, 1873.)

Under the English statute the Commission inquires whether "having regard to the circumstances," the route proposed is a reasonable one. Under our statute the language is that the Commission shall establish a route sought to be opened, "provided no reasonable or satisfactory through route exists." The provisions of the two statutes are practically the same in meaning, for under the English statute the English commission, in having regard to the circumstances, considers whether there is already in existence another through route which meets the requirements of the public. If it finds that there is such an existing through route, it declines to establish another. Hence it follows that constructions as to what is a reasonable route under the English act are of most persuasive force in determining what is a reasonable route under our act. As far as appears, however, the English cases have dealt with freight routes, and in none of them has the question of the reasonableness of a passenger route been considered. The English commission has adopted the same rules as those followed by our Commission in determining the reasonableness of a route. It has held that the inquiry of first importance must always be whether the proposed route is



in the interests of the public, and it has recognized the principle noted in the decisions of the Interstate Commerce Commission above referred to, that it is just that when a railroad originates traffic it should have the benefit of the long haul, provided the public is not inconvenienced thereby.

In *E. & W. Junction Railway Company v. G. W. Railway* (1 Railway and Canal Cases, 331) the question was whether the Commission should direct the establishment of a through route between two points via Stratford when there already existed a through route via Fenny-Compton. Under the provisions of the English statute the Commission was required to determine whether the proposed route via Stratford was a reasonable one; and as bearing on that question, the Commission considered the character of the services offered by the through route already in existence via Fenny-Compton. The Commission found that the through freight route proposed was longer than the other, and that the natural route was the one which had already been established. Therefore it refused to direct the railroads to put into effect another through route.

Other English cases are *Caledonian Railway Company v. N. British R. R.* (3 Railway and Canal Cases, 403) and *Swindon, Marlboro' and Andover R. R. Co. v. Great Western R. R.* (4 Railway and Canal Cases, 352).

## III.

**The testimony supports the finding of fact of the Commission that as regards passenger traffic the existing through route was not reasonable or satisfactory.**

If the existing through route is unsatisfactory to a large body of the traveling public, this fact itself is evidence that the existing route is not reasonably satisfactory. Of course the caprice or even the natural desire of an occasional passenger or of a considerable number of passengers should not govern. But if a large part or the larger part of the traveling public prefers to use some other route than the route existing, this fact is certainly evidence tending to prove that the existing route is not reasonable or satisfactory. The majority of a community is not governed by caprice. The fact that a large portion of the traveling public is dissatisfied with the existing route is of itself substantial evidence that there must be a reason for that dissatisfaction, and that the route does not fully serve the interests of the public. One passenger, in the exercise of personal preference, may perhaps be governed by whim, but when many exercise their personal preference in the same way, it is apparent that it is not a whim that governs them, but rather that there must be some substantial basis for the complaint.

For these reasons the Commission inquired how large a portion of the traveling public was dissatisfied with the through route via the Northern Pacific, and

how many wished to go via the Union Pacific through Portland. The Commission found as a fact that many one-way travelers to Puget Sound points even now go by the Union Pacific lines through Portland. This number amounted to over 8,000 persons a year, or 22 a day. (Record, p. 9.) It does not appear how many more would prefer this route if it were opened for through travel.

The plain intention of the provisions of the statute is that the public shall be properly served. So long as this service is given, the carriers may themselves determine the manner and method of the service. The fundamental question in every case is whether the public interests under all the circumstances are fairly met. Considering fairly the desire of those who use these railway lines, ought the facilities of through travel via the Portland gateway be accorded, or is the present arrangement reasonable and satisfactory?

As regards passenger travel, distance is not the only consideration. A comparison of the relative distances from Chicago and Missouri River points to Tacoma via the Northern Pacific and Union Pacific lines and of the relative running times of the two routes and their respective train service may be helpful, but it is not determinative when passenger traffic is under consideration. This is particularly true when, as in the present case, the two routes are practically equal in distance. Some lines offer much greater scenic attractions than others. May not a traveler reasonably select his route with reference

to the natural beauties which it offers? Along some lines there is greater opportunity for the acquisition of new homes and the opening of new enterprises. A desire to see such country, for instance, the land opened by the United States Government for cultivation by reclamation, is a very important factor, and may reasonably influence the selection of the route.

It is reasonable that the traveler should consider all these facts in selecting his route. Therefore when a large part of the public, taking them into consideration, select a route other than the one already afforded, it is clear that the existing route can not reasonably and satisfactorily serve the interests of the public.

Now what are the facts in this case? If the passenger travels by the Northern Pacific route, he can pass, broadly speaking, through no territory lying south of the main line of the Northern Pacific and west of the Missouri River. On the other hand, if he goes via Portland he can select any one of the great variety of routes traversing this southern territory as far as Ogden. From Chicago or St. Louis he can take the Burlington or the Rock Island or the Missouri Pacific or the Santa Fe to the Colorado common points. From there he may proceed to Ogden via the Denver and Rio Grande or the Colorado Midland, as well as the Union Pacific. These routes enable him to visit numerous cities like Denver, Pueblo, Salt Lake City, and Ogden, which he could not reach via the northern lines, and which cities possess many points of interest which naturally may attract him.

The portion of our country which to-day presents the greatest opportunity for the acquisition of new homes and the opening of new enterprises is that traversed by these mid-continental lines. The United States Government is expending vast sums of money for the purpose of bringing into cultivation hundreds of thousands of acres along them. Is it reasonable to say that a through route which deprives the traveler of the possibility of enjoying any of the advantages offered to one traveling on any one of the routes named south of the Northern Pacific is a reasonable and satisfactory route?

The distances by the routes named via Ogden and Portland are only slightly greater than the distances via the Northern Pacific (Record, p. 6). From Chicago via St. Paul to Tacoma the distance is 2,319 miles, while via Omaha and Portland it is 2,436 miles. From Omaha via Billings the distance is 1,909 miles, and via Portland it is 1,943 miles. The passenger who prefers the Union Pacific route therefore is not unreasonable, for he is selecting a route which is about as quick as any other.

It is possible to buy a ticket from Washington, D. C., to Seattle, via New Orleans, El Paso, Los Angeles, and the Southern Pacific, through Portland, at the same price as via Chicago and the Union Pacific or the Great Northern. (Record, p. 74.) The Northern Pacific joins in through routes at Portland with the Southern Pacific—that is, when the passenger is going to Puget Sound territory from points in Arizona, California, Mexico, Nevada, New Mexico,

and Utah via the Southern Pacific lines to Portland, he can obtain in any one of those States a through ticket to Seattle. (Record, p. 74.)

The Northern Pacific concurs in a joint through route with the Great Northern from St. Paul, allowing the latter road to carry the passenger as far as Tacoma, and reserving only the short haul from Tacoma to Seattle for itself. The same arrangement is made for a joint through route with the Canadian Pacific, which takes the business from the east as far as Sumas Junction, and then hauls the passenger from that station to Seattle. These two roads are parallel and competing lines of the Northern Pacific, running north of that line. (Record, p. 96.)

The Commission gives a forcible illustration of the effect of holding that a passenger route is reasonable and satisfactory which affords the traveler a route as short as any other and as quick, but which denies to him the reasonable exercise of personal preference. It takes the case of Ogden as an illustration. As stated above, the traveler from Missouri River points may select his route from a large number of combinations. He has first a selection from Missouri River points to Colorado common points, and then another selection there from another large number of roads going to Ogden; but from Ogden he must go to Portland by the Union Pacific lines. Now, may the Union Pacific, because it has one through line from the Missouri River points to Ogden, decline to join at Ogden in a through route with another line which has taken the passenger part of the way from Missouri

River points to Ogden? In other words, may the Union Pacific, in order to get the benefit of the long haul from Missouri River points to Ogden, deprive a passenger of the benefits of a through route from Missouri River points to Portland on any other line or combination of lines because he has gone part way to Ogden on another line? May the Union Pacific, which is the only line from Ogden to Portland, by closing Ogden, deprive the passenger of the opportunity of beholding the scenery on these other lines?

It is evident that the Union Pacific has no power to close the Ogden gateway to Portland, even though its own lines from Missouri River points to Ogden afford the passenger a through route as quick as that given by any other line or combination of lines. The reason that the Union Pacific would not be allowed to close Ogden is that its own line would not fully serve the interests of the public, and therefore would not be a reasonable and satisfactory route. That route is not reasonable and satisfactory which is not selected by a large part of the traveling public, for such a route does not fairly meet the requirements of the public.

An examination of the record and of the testimony taken before the Commission, which was offered in court as an exhibit to the complaint on a motion for a preliminary injunction, supports the finding of the Commission that a large portion of the traveling public prefers to travel via the line leading through the Portland gateway.

The Commission stated this finding as follows (Rec., pp. 9 and 29):

The parties were required to furnish a statement showing the number of passengers who actually do even at the present time travel between these northwestern points and eastern destinations via Portland. Those statements cover five years, from 1904 to 1908, inclusive, and show the total number of such passengers to be nearly 10,000, an average of 8,000 persons per year or 22 per day. A good deal of testimony was introduced by the Union Pacific Line to show a desire on the part of the traveling public to go via Portland, and that testimony does of itself conclusively establish the fact; but the most satisfactory proof is the actual record of what daily happens.

*We are of the opinion and find that a substantial part of those actually making the journey between these points in the northwest and various points in the east to the east of Colorado common points prefer to travel via the lines which lead finally through the Portland gateway.*

We are of the opinion that the desire of this portion of the public to use those routes is a reasonable one, and therefore that the northern route offered by the Northern Pacific is not, within the contemplation of the statute and as to such travelers, a reasonable or satisfactory through route.

The following is the testimony of a few of the witnesses who produced evidence of the demand for a



through route other than that along the Northern Pacific.

Charles A. Cairns, Chicago, general passenger and ticket agent for the Chicago and Northwestern Railroad (Record, p. 138):

Our lines run through the States of Wisconsin, Illinois, Iowa, Minnesota, Nebraska, Michigan, North Dakota, and Wyoming.

From all intermediate points between Chicago and the Missouri River, the only direct and reasonable route that we have is through the Portland gateway. From such points as De Kalb, Stirling, Clinton, Cedar Rapids, and other points intermediate between Chicago and Missouri River, so far as the Northwestern is concerned, the direct route is via Portland; practically the entire demand between Chicago and the Missouri River on our line is through the Portland gateway. It is reasonable to say that all of our business in the other direction comes that way. At Chicago itself the demand is greater via our line through the Omaha gateway than it is through St. Paul. The demand for tickets from Omaha in conjunction with the Burlington via Billings is extremely limited. The Northwestern, in connection with the Union Pacific, operates through trains from Chicago to Portland without any change on either class of tickets. There are two direct trains, the Overland Limited, that handles only first-class passengers, and a night train leaving Chicago at 10.45, handling first class and second class.

F. S. MacFarland, Omaha, assistant ticket agent at the Union Station at Omaha (Record, p. 126):

Seventy-five per cent of the people who come to the union ticket office and request passage for Puget Sound points ask to go over the Union Pacific route through the Portland gateway. I act for all the companies and do not suggest any route, one way or the other.

W. H. Murray, Omaha, assistant general passenger agent of the Union Pacific (Record, p. 72):

The passengers purchasing tickets, invariably, it has been our experience, insist on having a route through Salt Lake City or through Colorado and Huntington. The people making the trip out there, either for business or for pleasure, usually are looking after land to make homes, and they find that along the Oregon Short Line and the O. R. and N. in Utah, Idaho, and Oregon.

George D. Cotton, Chicago, assistant city passenger and ticket agent for the Rock Island 'Frisco lines (Record, p. 108):

In 95 per cent of the inquiries we get the passenger specifies that he wants the Colorado and Salt Lake route. I have in mind especially our second-class business. (See also Record, p. 130.)

William Stinde, St. Louis, city ticket agent for the Wabash (Record, p. 110):

We have considerable demand for tickets via the Union Pacific lines to Puget Sound points.

J. B. Frawley, Kansas City, district passenger agent of the Union Pacific (Record, p. 112):

I should say that if there was an open gateway through Portland, we would send probably one-third more people to Puget Sound points through there than we do now, fully one-third or one-half.

C. W. Jones, Kansas City, city passenger and ticket agent of the Rock Island Frisco Railroad (Record, p. 114):

Ticketing from Kansas City, our gateway is Denver and Ogden to north Puget Sound points. Ninety-nine per cent of the business going from that territory to Seattle wants to go through Colorado to Salt Lake.

Fred Schwaneck, St. Louis, assistant ticket agent of the Missouri Pacific (Record, p. 115):

The only way we get business to Seattle is via Portland. During the colony season we have a great deal of business through Denver and Salt Lake City to Portland and Seattle. The only reasonable route for people on our line is through the Portland gateway.

J. G. Rodgers, St. Louis, ticket seller for the Chicago and Alton (Record, p. 120):

To two-thirds of the people who come to our office requesting tickets to Puget Sound points we sell tickets through the Union Pacific lines and via Portland. Our line is to Kansas City.

John B. De Friest, New York, general eastern agent of the Union Pacific (Record, p. 122):

About 75 to 80 per cent of the people going to our office for tickets to Puget Sound points wish to go over the route via Portland.

J. R. Sherwin, Kansas City, passenger and ticket agent for the Missouri Pacific (Record, p. 124):

About 60 to 75 per cent of the passengers desiring to go to Puget Sound points request tickets at our office over the Union Pacific route.

R. D. Williams, assistant passenger agent Union Pacific, Chicago (Record, p. 129):

Ninety-nine per cent of the people calling at our office desiring to go to Puget Sound points call for tickets via Portland.

The Commission stated that it had received petitions for the establishment of a through route via Portland (Record, p. 118) from the following interests: Kansas City Live Stock Exchange, Kansas City Fruit Exchange, Kansas City Commercial Club, professional and commercial interests of Kansas City.

**CONCLUSION.**

To repeat:

First. The order of the Commission can not be set aside by the court merely for the reason that the court, if placed in the position of the Commission, would not have ordered the through route.

Second. In determining whether an existing through route is reasonable or satisfactory the first consideration is the public interest.

Third. A wide difference exists between a reasonable through route for passenger movement and one for the movement of freight. Into the former there enters a personal element which does not exist in the case of property.

Fourth. The testimony adduced before the Commission supports the finding of that body that a reasonable and satisfactory through route for passengers did not already exist, and therefore the Commission was justified in opening the Portland gateway by directing the establishment of another through route.

For these reasons it is submitted that the decree of the Circuit Court of the United States for the District of Minnesota should be reversed.

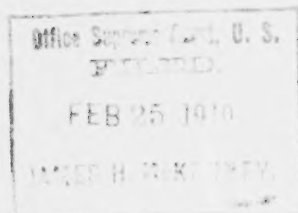
WADE H. ELLIS,

*Assistant to the Attorney-General.*

EDWIN P. GROSVENOR,

P. J. FARRELL,

*Special Assistants to the Attorney-General.*



# SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

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**No. 570.**

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INTERSTATE COMMERCE COMMISSION, APPELLANT.

*vs.*

NORTHERN PACIFIC RAILWAY COMPANY.

On the argument the decision of Mr. Justice Field, in the case of Oregon Short Line and Utah Northern Railway Company *vs.* Northern Pacific Railroad Company, affirmed by the Circuit Court of Appeals, not cited in the brief, was referred to, and counsel undertook to furnish the court a reference to the decision. The case before the Circuit Court is reported in 51 Federal, p. 465, and in the Circuit Court of Appeals is reported in 61 Federal, p. 158.

CHARLES W. BUNN.

26  
Office Supreme Court, U. S.

FILED.

FEB 9 1910

JAMES H. MCKENNEY,

# Supreme Court of the United States

OCTOBER TERM, 1909.

No. 570.

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INTERSTATE COMMERCE COMMISSION,

*Appellant,*

vs.

NORTHERN PACIFIC RAILWAY COMPANY.

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BRIEF FOR APPELLEE.

CHARLES W. BUNN.

# Supreme Court of the United States

INTERSTATE COMMERCE COMMISSION,

*Appellant,*

vs.

NORTHERN PACIFIC RAILWAY COMPANY.

This is an appeal from an order of the Circuit Court of the United States for the District of Minnesota, four circuit judges sitting, suspending and restraining at the suit of the Northern Pacific Railway Company the enforcement of an order of the Interstate Commerce Commission (Transcript pp. 149-150). The commission's order so restrained, with its opinion and a dissenting opinion of Chairman Knapp and Commissioner Clark, is set forth in the bill of complaint (Transcript pp. 3-15). The Attorney General filed, under the act of February 11, 1903, a certificate entitling the case to expedition (Transcript p. 19). The commission appeared against the bill in the Circuit Court and complainant thereupon moved for an injunction pending the suit as prayed in the bill restraining the enforcement of the order (Transcript p. 21). On the argument of this motion the parties by consent laid before the court all the testimony taken before the commission (Transcript p. 22). No answer being filed the case was submitted upon the bill of complaint and the proceedings and testimony taken before the



commission. There is little controversy about the facts, the question on which the case turns being one of law.

The order of the commission originated in an inquiry instituted by that body upon its own motion, the purpose of which was to determine whether a joint passenger route and joint rates between eastern points and Puget Sound points (the principal ones being Seattle and Tacoma) should be ordered by the commission opened via the Union Pacific Railroad to Portland and thence via the appellee's line to Puget Sound. The Union Pacific terminates at Portland, from which city Puget Sound is reached by the Northern Pacific. The Northern Pacific, having its own line from eastern points to Seattle and Tacoma over which it prefers to carry passengers, objected to being ordered by the commission to join the Union Pacific in opening the proposed joint route. After hearing the Northern Pacific and Union Pacific, the commission ordered (Transcript p. 34) that the Chicago & Northwestern extending from Chicago to Omaha, the Union Pacific and allied companies whose lines reach from Omaha to Portland, and the Northern Pacific whose road connects Puget Sound and Portland, establish, on or before July 1, 1909, and maintain in force thereafter during a period of not less than two years, through routes and joint rates applicable thereto for the transportation of passengers and their baggage from Chicago, Illinois, Omaha, Nebraska, Kansas City, Missouri, etc., to points on the Northern Pacific Railway between Portland and Seattle, including the latter city; said joint rates to be the same as the rates contemporaneously in effect via the Northern Pacific

Railway and its present connections. A joint route and joint rates were also ordered in the reverse direction, that is, from Seattle eastwardly through Portland to Omaha, Kansas City, Chicago, etc.

The power of the commission in the premises depends on the fifteenth section of the act to regulate commerce as amended by the so-called Hepburn Act of June 29, 1906. The material part of the amended section is the second paragraph, reading:

"The Commission may also, after hearing on a complaint, establish through routes and joint rates as the maximum to be charged and prescribe the division of such rates as hereinbefore provided, and the terms and conditions under which such through routes shall be operated, when that may be necessary to give effect to any provision of this Act, and the carriers complained of have refused or neglected to voluntarily establish such through routes and joint rates, provided no reasonable or satisfactory through route exists, and this provision shall apply when one of the connecting carriers is a water line."

By the language quoted the commission's power in the premises is limited to cases where "no reasonable or satisfactory through route exists." To justify the order it was necessary for the commission to find upon evidence that the then existing through routes to Puget Sound points were unreasonable and unsatisfactory; and unless the commission found upon evidence and unless the evidence justifies the finding that the through routes then existing were both unreasonable and unsatisfactory the order was not authorized by the statute.

The map included in the transcript between pages 34 and 35 shows the railways and routes necessary to

be considered. The railway lines in black, extending from Chicago to Saint Paul, Chicago to Omaha and Billings, Montana, also reaching Saint Louis and Kansas City, are those of the Burlington. The lines in red, extending from Lake Superior and from Saint Paul and Minneapolis westwardly to Puget Sound and to Portland, are those of the Northern Pacific. These systems connect at Saint Paul and at Billings. The Union Pacific system extends from Omaha to Portland through the states of Nebraska, Wyoming, Idaho and Oregon. The Northern Pacific reaches Portland through Tacoma. At Saint Paul the Northern Pacific connects with the Chicago & Northwestern, Chicago, Milwaukee & St. Paul, and other railways between that city and Chicago; also with other railways extending from Saint Paul to Saint Louis, Omaha, Kansas City, points in Iowa and points upon the Mississippi and Missouri Rivers.

By its own line from St. Paul the Northern Pacific carries passengers to either Tacoma or Seattle, a distance of about 1,000 miles, and to the same cities it would carry passengers received at Billings a distance of about 1,000 miles, while passengers received at Portland from the Union Pacific it transports about 140 miles to Tacoma and about 180 miles to Seattle. The Northern Pacific has declined to make a through route and joint rates with the Union Pacific through Portland because it had already, by joint rates and connections at Saint Paul with the Burlington and other railways and at Billings with the Burlington, and by through car service, provided good and satisfactory through routes. Therefore it objects to be-

ing ordered to turn over to a competitor business which it had provided facilities for doing itself.

The Northern Pacific joins with the Union Pacific and other competing lines in through ticketing for round trips from the east to Puget Sound and return. That is, from Chicago one can buy a round trip through ticket either way by the Union Pacific and in the opposite way by the Northern. And the commission's order relates to one way tickets only. The map shows that the Northern Pacific reaches Portland via Puget Sound, while the Union Pacific would reach Puget Sound via Portland. The Northern Pacific's rate to Portland is the same as its rate to Seattle and Tacoma, though its distance to Portland is 140 miles or more longer; but the Union Pacific's rate to Puget Sound cities would have also to be the same as its rate to Portland. Therefore in the new joint route ordered by the commission if the Northern Pacific were to receive its local rate between Portland and Puget Sound cities (approximately five dollars) the Union Pacific would have to accept five dollars less than the Portland rate. On every passenger diverted from the line of the Northern Company and sent via the Portland route the Northern Company would receive about five dollars, instead of fare for one thousand miles paid by passengers it receives at Billings and for nineteen hundred miles paid by those it receives at St. Paul.

The commission found that the distance to Puget Sound both from Chicago and from points on the Missouri River (necessarily including points between Chicago and the Missouri River) is somewhat less via the Northern Pacific lines than through Portland; that from Chicago via Saint Paul the distance is 2,310 miles

whilst via Omaha the distance is 2,436 miles; that from Omaha via Billings the distance is 1,909 miles whilst via Portland the distance is 1,943 miles; that the running time from Chicago and Missouri River points is somewhat less via Saint Paul and Billings than via Portland; that the train service via Saint Paul is equally good with that via Portland; that when the evidence was taken before the commission there was but one through daily train from Missouri River points via Billings with a second train involving a lay-over and change of cars at Billings, but it was testified that another through train in the near future would be put on and premanently maintained; that on the whole the distance via the northern lines is somewhat shorter than via Portland and the time somewhat less; that the passenger goes in as good a car and is provided with as good a berth and as good a meal.

The facts shown on the hearing are well summarized in the following extract from Mr. Woodworth's evidence (Transcript pp. 45-46):

"Q. Mr. Woodworth, is there any Missouri River or Mississippi River point where the Union Pacific via Portland would furnish a better line to Puget Sound either in time or service than the Northern Pacific and Burlington?"

A. No, sir; and as to Chicago, if a man wanted to go through Omaha he could make better time by using the Burlington from Omaha. That is, he can go from Chicago to Seattle via Omaha and the Burlington in 83 hours and 30 minutes as against 87 hours and 5 minutes, the shortest possible time via Portland.

Q. Let us be clear about your answer to the next question. Therefore, do you find any point on the Mississippi River, or on the Missouri River, where the Union Pacific lines through Portland

furnish a better route either in time or service than the Burlington and Northern Pacific to passengers going to Puget Sound?

A. No, sir. In every case there is a very considerable difference in favor of the Northern Pacific."

The actual time and service as shown before the commission is as follows:

### FROM CHICAGO

#### *Via St. Paul*

6:30 P. M. from Chicago.

	HOURS	MILES
To St. Paul, C. B. & Q. ....	12:50	
Lay over.....	2:55	
To Seattle, N. P. ....	61:15	77:00 2312
Same schedule via C. & N. W., C. M. & St. P. and other roads.		

10:00 P. M. from Chicago.

To St. Paul, C. & N. W. ....	11:40	
Lay over.....	3:35	
To Seattle, N. P. ....	61:15	73:30 2312

#### *Via Billings.*

To Omaha, 11:00 P. M., C. B. & Q. ....	16:55	
Lay over.....	1:15	
To Seattle, C. B. & Q.-N. P. ....	66:20	83:30 2407

#### *Via Portland.*

To Omaha, 6:00 P. M., C. & N. W. ....	14:23	
Lay over.....	3:32	
To Portland, U. P. ....	61:55	
Lay over.....	2:55	
To Seattle, N. P. ....	7:20	87:05 2478
Standard sleepers Chicago to Portland.		

To Omaha, 10:45 P. M., C. & N. W.....	16:43	
Lay over.....	42	
To Portland, U. P.....	65:10	
Lay over.....	1:10	
To Seattle, N. P.....	7:45	91:30 2478
Coaches, tourist and standard sleepers Chicago to Portland.		

## FROM ST. LOUIS

*Via Billings.*

To Kansas City, 11:31 P. M., Wabash .....	8:00	
Lay over.....	2:59	
To Seattle, C. B. & Q.-N. P., 72:00	82:59	2333
Standard sleeper and coaches St. Louis to Kansas City.		
Standard sleeper, tourist cars and coaches Kansas City to Seattle.		

To Kansas City, 9:01 P. M., C. B. & Q.....	10:29	
Lay over.....	3:00	
To Seattle, C. B. & Q.-N. P., 72:00	85:29	2403
Through tourist sleeper and chair car St. Louis to Seattle.		
Through baggage car, standard sleeper and coaches Kansas City to Seattle.		
Approximately the same time is made by using Mis- souri Pacific or Alton Route St. Louis to Kan- sas City.		

*Via St. Paul.*

To St. Paul, 2:25 P. M., Wa- bash-Ia. C., M. & St. L., 18:30		
Lay over.....	1:25	
To Seattle, N. P.....	61:15	81:10 2508
Standard sleeper and coaches to St. Paul.		
All classes of equipment St. Paul to Seattle.		
Approximately the same time is made to St. Paul via C. B. & Q.-Rock Island Route.		

*Via Portland.*

To Burlington, Ia., 2:15 P. M.,		
C. B. & Q.....	6:40	
Lay over.....	2:25	
To Omaha, Neb., C. B. & Q., 9:10		
Lay over.....	:25	
To Portland, Ore., U. P.....	61:55	
Lay over.....	2:55	
To Seattle, N. P.....	7:20	90:50    2502
Through standard sleepers Omaha to Portland.		
Tourist sleeper Green River to Portland.		
To Kansas City, 9:06 A. M., C.		
B. & Q.....	8:20	
Lay over.....	:25	
To Portland, U. P.....	76:50	
Lay over.....	2:55	
To Seattle, N. P.....	7:20	95:50    2496
Through tourist sleeper Kansas City to Portland.		
Standard sleeper Kansas City to Denver.		
Standard sleeper Denver to Salt Lake.		
Standard sleeper Salt Lake to Portland.		
No coach accommodations between Cheyenne and		
Green River.		
To Kansas City, 11:31 P. M.,		
Wabash.....	8:00	
Lay over.....	2:34	
To Portland, U. P.....	71:15	
Lay over.....	2:55	
To Seattle, N. P.....	7:20	92:04    2493
Coaches, standard and tourist sleepers Kansas City		
to Portland.		

## FROM ST. PAUL.

*Via Nor. Pac.*

To Seattle, 10:15 A. M., N. P. 61:15	1912
Standard and tourist sleepers, coaches and observa-	
tion car.	
To Seattle, 10:15 P. M., N. P. 66:15	1912
Same equipment except observation car.	



*Via Union Pacific & Portland.*

To Omaha, C. & N. W. ....	11:25		
Lay over.....	3:55		
To Portland, U. P. ....	61:55		
Lay over.....	2:55		
To Seattle, N. P. ....	7:20	84:30	2356
To Omaha, C. & N. W. ....	12:50		
Lay over.....	5:10		
To Portland, U. P. ....	65:10		
Lay over.....	1:10		
To Seattle, N. P. ....	7:45	92:05	2356

## FROM KANSAS CITY

*Via Billings.*

To Seattle, 10:30 A. M., C. B.			
& Q.-N. P., 41-15.....	72:00	2067	
6:05 P. M., 43-1.....	77:25	2067	

*Via St. Paul.*

To St. Paul, 12:05 P. M., C.			
G. W. ....	19:15		
Lay over.....	2:55		
To Seattle, 10:15 A. M., N. P. 61:15	83:25	2439	

*Via Portland.*

To Portland, 6:05 P. M., U. P. 76:50			
Lay over.....	2:55		
To Seattle, N. P. ....	7:20	87:30	2216

## FROM ST. JOSEPH

*Via Billings.*

To Seattle, 12:50 P. M., C. B.			
& Q. & N. P., 41-15.....	69:40	1987	
8:30 P. M., 43-1.....	75:00	1987	

*Via St. Paul.*

To St. Paul, 3:00 P. M., C. G.			
W. ....	16:20		
Lay over.....	2:55		
To Seattle, 10:15 A. M., N. P. 61:15	80:30	2381	

*Via Portland*

To Grand Island, 8:10 P. M.,		
St. J. & G. I. ....	11:40	
Lay over. ....	5:20	
To Portland, U. P. ....	57:45	
Lay over. ....	2:55	
To Seattle, N. P. ....	7:20	85:00 208.3
Coach, tourist and standard sleeping car train 5 hours shorter due to closer connections Grand Island and Portland.		

## FROM OMAHA

*Via Billings.*

To Seattle, 4:10 P. M., C. B. &		
Q.-N. P., 41-15. ....	66:20	191.5
12:15 A. M., 43-1. ....	71:15	191.5

*Via St. Paul*

To St. Paul, 9:00 P. M., C. &		
N. W. ....	11:20	
Lay over. ....	1:55	
To Seattle, 10:15 A. M., N. P., 61:15	74:30	228.3

*Via Portland.*

To Portland, 8:55 A. M., U. P., 61:55		
Lay over. ....	2:55	
To Seattle, N. P. ....	7:20	72:10 198.5

## FROM SIOUX CITY

*Via Billings.*

To Lincoln, C. & N. W. ....	5:10	
Lay over. ....	1:45	
To Seattle, 6:10 P. M., C. B.		
& Q.-N. P. ....	64:15	70:10 199.2
Baggage cars, coaches, standard and tourist sleep- ers Lincoln to Seattle.		

*Via St. Paul.*

To St. Paul, C. & N. W. ....	8:10	
Lay over. ....	1:55	
To Seattle, 10:15 A. M., N. P., 61:15	71:20	218.2
Connections also made with train leaving St. Paul 10:15 P. M.		

*Via Portland.*

To Omaha, C. & N. W. ....	3:29		
Lay over.....	:42		
To Portland, 4:10 P. M., U. P. ....	6:10		
Lay over.....	1:10		
To Seattle, N. P. ....	7:45	78:16	2006
To Omaha, C. & N. W. ....	2:50		
Lay over.....	:55		
To Portland, 8:55 A. M., U. P. ....	6:55		
Lay over.....	2:55		
To Seattle, N. P. ....	7:20	75:55	2006

## FROM TOPEKA

*Via Billings.*

To Kansas City, 8:15 A. M.,			
U. P. ....	2:00		
Lay over.....	:15		
To Seattle, C. B. & Q. & N. P. ....	7:20	74:15	2134

*Via St. Paul.*

To Kansas City, 8:15 A. M.,			
U. P. ....	2:00		
Lay over.....	1:50		
To St. Paul, C. G. W. ....	10:15		
Lay over.....	2:55		
To Seattle, N. P. ....	61:15	86:35	2566

*Via Portland.*

To Portland, 7:35 P. M., U. P. ....	7:15		
Lay over.....	2:55		
To Seattle, N. P. ....	7:20	84:90	2147
To Portland, 11:50 A. M., U.			
P. ....	69:30		
Lay over.....	1:10		
To Seattle, N. P. ....	7:45	78:25	2147

FROM ELLSWORTH, KANSAS (local station in  
Kansas on Union Pacific line between Kansas City  
and Denver)

*Via Billings.*

To Kansas City, 2:27 A. M.,			
U. P.....	6:08		
Lay over.....	1:55		
To Seattle, 10:30 A. M., C. B.			
& Q.-N. P.....	7:00	80:03	2290
Connection with 41-15.			
To Kansas City, 9:28 A. M.,			
U. P.....	6:42		
Lay over.....	1:55		
To Seattle, C. B. & Q. & N. P., 77:25	86:02		2290
Connection with 43-1.			

*Via Portland.*

To Portland, 5:10 P. M., U. P., 71:00			
Lay over.....	2:55		
To Seattle .....	7:20	81:15	1993
Standard and tourist sleeping cars only.			
Coach, tourist and standard sleeping car train 7 hrs.			
5 min. faster.			

FROM FORT WORTH, TEXAS

*Via Billings.*

To Denver, 9:20 A. M., C. S., 32:25			
Lay over.....	2:30		
To Seattle, C. B. & Q. & N. P., 50:15	85:10		2538

*Via Portland.*

To Denver, 9:20 A. M., C. S., 32:25			
Lay over.....	3:15		
To Portland, 7:50 P. M., U. P., 50:00			
Lay over.....	2:55		
To Seattle, N. P.....	7:20	95:55	2379

FROM DENVER

*Via Billings.*

To Seattle, 7:30 P. M., C. B.			
& Q. & N. P.....	61:15		1735

*Via Portland.*

To Portland, 7:50 P. M., U. P.	50:00		
Lay over.....	2:55		
To Seattle, N. P.....	7:20	60:15	1571

## FROM CEDAR RAPIDS, IOWA

*Via Billings.*

To Omaha, 7:25 A. M., C. & N. W.....	8:10		
Lay over.....	35		
To Seattle, 4:10 P. M., C. B. & Q. & N. P.....	66:20	75:05	2188

*Via St. Paul.*

To St. Paul, 12:20 A. M., C. R. I. & P.....	7:40		
Lay over.....	2:15		
To Seattle, 10:15 A. M., N. P.	61:15	71:10	2168

*Via Portland.*

To Omaha, 5:30 A. M., C. & N. W.....	9:58		
Lay over.....	42		
To Portland, U. P.....	65:10		
Lay over.....	1:10		
To Seattle, N. P.....	7:45	84:45	2259

## FROM DES MOINES, IOWA

*Via Billings.*

To Omaha, 8:45 A. M., C. R. I. & P.....	4:25		
Lay over.....	3:00		
To Seattle, C. B. & Q.-N. P....	66:20	73:45	2061

*Via St. Paul.*

To St. Paul, 9:10 P. M., C. G. W. ....	10:10		
Lay over.....	2:55		
To Seattle, N. P.....	61:15	74:20	2274

*Via Portland.*

To Omaha, 3:50 A. M., C. R.

I. &amp; P. .... 4:45

Lay over. .... :20

To Portland, U. P. .... 66:00

Lay over. .... 2:55

To Seattle, N. P. .... 7:20

77:20

21:31

To Omaha, 8:45 A. M., C. R.

I. &amp; P. .... 4:25

Lay over. .... 3:00

To Portland, U. P. .... 65:10

Lay over. .... 1:10

To Seattle, N. P. .... 7:45

81:30

21:31

## FROM CLINTON, IOWA

*Via Billings.*

To Omaha, 3:15 A. M., C. &amp;

N. W. .... 12:13

Lay over. .... :42

To Seattle, 4:10 P. M., C. B. &amp;

Q. &amp; N. P. .... 66:20

79:15

22:69

*Via St. Paul.*

To St. Paul, 9:50 P. M., C. B.

&amp; Q. .... 9:30

Lay over. .... 2:55

To Seattle, 10:15 A. M., N. P. 61:15

73:40

22:18

*Via Portland.*

To Omaha, 9:45 P. M., C. &amp;

N. W. .... 10:38

Lay over. .... :32

To Portland, 8:55 A. M., U. P. 61:55

Lay over. .... 2:55

To Seattle, 11:45 P. M., N. P. 7:20

83:20

23:39

## FROM MARSHALLTOWN, IOWA

*Via Billings.*

To Omaha, 8:58 A. M., C. &amp;

N. W. .... 6:37

Lay over. .... :35

To Seattle, 4:10 P. M., C. B. &amp;

Q.-N. P. .... 66:20

73:32

21:19

*Via St. Paul.*

To St. Paul, 12:50 A. M., Ia.		
C.-M. & St. L. ....	8:00	
Lay over.....	1:25	
To Seattle, 10:15 A. M., N. P. 61:15	70:40	2037

*Via Portland.*

To Omaha, 1:54 A. M., C. &		
N. W. ....	6:20	
Lay over.....	3:32	
To Portland, 8:55 A. M., U. P. 62:00		
Lay over.....	2:55	
To Seattle, 11:45 P. M., N. P. 7:20	79:16	2189
To Omaha, 8:00 A. M., C. &		
N. W. ....	7:28	
Lay over.....	4:42	
To Portland, U. P. ....	65:10	
Lay over.....	1:10	
To Seattle, N. P. ....	7:45	82:15 2180

## FROM DAVENPORT, IOWA

*Via Billings.*

To Omaha, 3:25 A. M., C. B.		
& Q. ....	9:45	
Lay over.....	3:00	
To Seattle, C. B. & Q.-N. P. ....	66:20	79:05 2235

*Via St. Paul.*

To St. Paul, 8:40 P. M., C. B.		
& Q. ....	10:40	
Lay over.....	2:55	
To Seattle, N. P. ....	61:15	74:50 2253

*Via Portland.*

To Omaha, 10:47 P. M., C. R.		
I. & P. ....	9:48	
Lay over.....	4:20	
To Portland, U. P. ....	61:55	
Lay over.....	2:55	
To Seattle, N. P. ....	7:20	82:18 2305

## FROM PEORIA, ILL.

*Via Billings.*

To Omaha, 12:01 A. M., C. R.			
I. & P. ....	13:00		
Lay over. ....	3:00		
To Seattle, 4:10 P. M., C. B. &			
Q-N. P. ....	66:20	82:20	2351

*Via St. Paul.*

To St. Paul, 4:00 P. M., Ia. C.,			
M. & St. L. ....	16:50		
Lay over. ....	1:25		
To Seattle, N. P. ....	61:15	79:30	2364

*Via Portland.*

To Omaha, 8:00 P. M., C. B.			
& Q. ....	12:30		
Lay over. ....	1:25		
To Portland, 8:55 A. M., U. P.	61:55		
Lay over. ....	2:55		
To Seattle, N. P. ....	7:20	85:05	2371

## FROM QUINCY, ILL.

*Via Billings.*

To Kansas City, 1:10 A. M., C.			
B. & Q. ....	6:50		
Lay over. ....	2:30		
To Seattle, 10:30 A. M., C. B.			
& Q-N. P. ....	72:00	81:20	2293

*Via St. Paul.*

To St. Paul, 6:10 P. M., C. B.			
& Q-C. R. I. & P. ....	13:50		
Lay over. ....	2:15		
To Seattle, 10:15 P. M., N. P.	61:15	77:20	2348

*Via Portland.*

To Kansas City, 1:10 A. M., C.			
B. & Q. ....	6:50		
Lay over. ....	2:05		
To Portland, U. P. ....	71:15		
Lay over. ....	1:10		
To Seattle, N. P. ....	7:45	89:05	2442



## FROM SPRINGFIELD, ILL.

*Via Billings.*

To Kansas City, 11:20 P. M.,		
C. & A.....	8:40	
Lay over.....	2:30	
To Seattle, C. B. & Q. & N. P..	72:00	83:10 2364

*Via St. Paul.*

To Chicago, 12:02 P. M., C. &		
A. ....	5:02	
Lay over.....	1:26	
To St. Paul, C. B. & Q.....	12:50	
Lay over.....	2:55	
To Seattle, N. P.....	61:15	83:28 2497

*Via Portland.*

To Kansas City, 11:20 P. M.,		
C. & A.....	8:40	
Lay over.....	2:05	
To Portland, U. P.....	71:15	
Lay over.....	1:10	
To Seattle, N. P.....	7:45	90:55 2364

## FROM MILWAUKEE

*Via St. Paul.*

To St. Paul, 8:55 P. M., C. M.		
& St. P.....	10:35	
Lay over.....	2:55	
To Seattle, N. P.....	61:15	74:45 2237
Approximately same schedule via C. & N. W. and W. C. lines.		

*Via Portland.*

To Chicago, C. & N. W.....	1:55	
Lay over.....	3:05	
To Omaha, 6:00 P. M., C. &		
N. W.....	14:23	
Lay over.....	3:32	
To Portland, U. P.....	61:55	
Lay over.....	2:55	
To Seattle, N. P.....	7:20	89:05 2563
Standard sleepers Chicago to Portland.		

To Chicago, C. & N. W.....	2:10		
Lay over.....	1:15		
To Omaha, 10:45 P. M., C. & N. W.....	16:43		
Lay over.....	:42		
To Portland, U. P.....	65:10		
Lay over.....	1:10		
To Seattle, N. P.....	7:45	94:55	2563
Coaches, tourist and standard sleepers Chicago to Portland.			

## FROM MADISON, WISCONSIN

*Via St. Paul.*

To St. Paul, 1:26 A. M., C. & N. W.....	8:14		
Lay over.....	:35		
To Seattle, N. P.....	61:15	70:04	2183
To St. Paul, 10:45 P. M., C. & N. W.....	8:35		
Lay over.....	2:55		
To Seattle, N. P.....	61:15	72:45	2183

*Via Portland.*

To Chicago, C. & N. W.....	4:15		
Lay over.....	1:00		
To Omaha, C. & N. W.....	16:43		
Lay over.....	:42		
To Portland, U. P.....	65:10		
Lay over.....	1:10		
To Seattle, N. P.....	7:45	96:45	2645
To Chicago, C. & N. W.....	4:50		
Lay over.....	:05		
To Omaha, 6:00 P. M., C. & N. W.....	14:23		
Lay over.....	:32		
To Portland, U. P.....	61:55		
Lay over.....	2:55		
To Seattle, N. P.....	7:20	92:00	2645

FROM NORTH PLATTE, NEBRASKA, (a local station on main Union Pacific line in Nebraska)

*Via Billings.*

To Grand Island, 11:40 P. M.,			
U. P.....	4:25		
Lay over.....	1:20		
To Seattle, C. B. & Q. & N. P.	66:05	71:50	1900
Connection with 43-1.			
To Grand Island, 9:25 A. M.,			
U. P.....	4:00		
Lay over.....	7:35		
To Seattle, C. B. & Q. & N. P.	61:20	72:55	1900
Connection with 41-15.			

*Via Portland.*

To Portland, 4:35 P. M., U. P.			
Lay over.....	2:55		
To Seattle, N. P.....	7:20	62:30	1694
Standard sleepers only.			
Coach, tourist and standard sleeping car train 50 minutes longer.			

The showing made by the foregoing is that from Chicago, and consequently from all points east of Chicago, and from all points on the Missouri River, and consequently from all points between Chicago and the Missouri River, the service furnished by the Northern Pacific with the Burlington and other connections is quicker in point of time, better in respect of through cars and frequency of trains, and at least equal in every other respect to the service offered the public via Portland.

Notwithstanding this the commission ordered the Northern Pacific to join with the Union Pacific in making a joint rate and in furnishing through facilities

to induce, to the best of its ability, passengers to travel via the lines of a competitor instead of via its lines.

The ground given by the commission for its order (disregarding two minor considerations) is, that a through route ought to be opened via Portland because of the desire of many travelers to visit en route cities on or near the Union Pacific, like Denver, Pueblo, Salt Lake City, Ogden, etc.; or to see objects of interest; or to visit friends; or to stop over on the Union Pacific with a view to the acquisition of a new home, or to examine new lands being brought into cultivation, along that line; or to enjoy the pleasures of scenery and examples of the sublime and beautiful in the territory along the Union Pacific (Transcript pp. 27-28).

The commission suggested two minor reasons for the order; (a) that the cold is more severe in winter and longer continued, the snows more frequent and deeper, interruptions of travel from snow blockades and similar causes greater on the northern route; (b) that snows and high water may come at a different time on the Union Pacific from the snows and high water with which the northern line is afflicted and communication at times may be more certain via the Union Pacific than via the more northerly line. As to these minor suggestions, not a word of evidence was given at the hearing on which to base them. Had it been asserted on the hearing before the commission that the northern line had a disadvantage over the Union Pacific because of either climate, snow or water, testimony would have been offered meeting, or at least tending to meet, such suggestion. However, the sug-

gestions now made by the commission, never having been pleaded or asserted in any manner or form at the hearing, it was thought unnecessary to disprove what had not been asserted (see Bill of Complaint Transcript p. 16). The record will be searched in vain for any testimony justifying the suggestions of the commission on these points. Doubtless this is why the commission referred to these considerations as minor ones, the question, as it says, being really determined upon the conceded fact that a considerable number of travelers prefer to go to Puget Sound through Portland.

When the Hepburn Act was passed it had been settled that joint routes and tariffs were a matter of convention between carriers and that the act to regulate commerce contained no provision warranting their imposition by order of the commission. *Southern Pacific Co. v. Interstate Commerce Commission*, 200 U. S. 536; *King v. N. Y., N. H. & H. R. Co.*, 4 I. C. C. R. 234, 262; *Independent Refiners v. Western N. Y. & P. R. Co.*, 5 I. C. C. R. 415, 458; *Fred G. Clark v. L. S. & M. S. Ry. Co.*, 11 I. C. R. 558; *Re Alleged Unlawful Discrimination*, 11 I. C. R. 587.

Therefore the amendatory section above quoted confers on the commission a new power which cannot be enlarged by intendment or doubtful interpretation. This power was conferred on the commission subject to the plain limitations stated in the language of the amendment "provided no reasonable or satisfactory through route exists."

Since the amendment of 1906 the commission several times has said that it has no power to order a through route except where no reasonable or satisfac-

tory one exists. *Cardiff Coal Co. v. C. M. & St. P. Ry. Co.*, 13 I. C. R. 460. But in *Pacific Coast Lumber Manufacturers' Ass'n. v. N. P. Ry. Co.*, 14 I. C. C. R. 23, the commission *obiter* threw out the suggestion that there *might* be a difference between a reasonable route for freight and one for passengers. This intimation foreshadowed the order in question, and in its last annual report (p. 37) the commission perhaps more definitely than anywhere else has stated the ground of its order in this case. In this report the idea is most clearly expressed that the human element or the element of personal choice and desire of the passenger is *the* difference between passenger and freight transportation which justifies the making of this order.

Whether this *ought* to be the law is not the question. The case must be determined upon the language used by Congress. In order to reach its conclusion the commission is obliged (Transcript p. 5) to do great violence to the language of the act when it says that the words "reasonable or satisfactory" are equivalent to "reasonably satisfactory," and concludes from this (Transcript p. 9) that because the desire of a portion of the public to use a route is reasonable, competing routes are therefore not reasonable or satisfactory. Certain it is that the language of the act draws no distinction between passenger and freight business. The same words were used by Congress to describe the commission's power as to each, and Congress treated them therefore as one business and not as two. It would seem to follow that, whilst the facts determining what is a reasonable or satisfactory route for passengers are different from those which determine the question as to freight, the same principles of interpreta-

tion of the words "reasonable or satisfactory" must be applied regardless of whether passengers or freight is spoken of. Quick time, comfortable day and night cars, through service, eating facilities, and the like are pertinent to what is a reasonable or satisfactory route for passengers; whilst all these facts except quick service are immaterial as to freight, and even quick service may not be highly important.

But the legal principle applicable to freight business is the same which applies to passengers; and that principle must be that the efficiency [and in the case of passengers efficiency includes comfort] of the transportation itself are controlling. To depart from this principle is to determine the question by no rule except the discretion of the commission, and plainly Congress did not rest this question in that discretion. If the desire of any considerable number of passengers is to compel the opening of through routes and the issuing of through tickets, hardly a route can be traced upon the map which would not have to be made a through route for passengers.

The Northern Pacific has expended its money and years of effort developing the Puget Sound country, in establishing connections and in providing by its own railway and those connections what appears now to be a perfectly satisfactory and reasonable route to and from Puget Sound, if the transportation alone is to be regarded. It can take a passenger at Chicago and carry him to Seattle more quickly, and on the whole more comfortably, than he can be carried to the same city through Portland. But no doubt Denver, Salt Lake City, Pueblo and Portland are cities which he might wish to visit, and no doubt there may be and

are various reasons outside of efficiency and comfort of the transportation which move many passengers to desire the trip via Portland. The Northern Pacific puts up no wall to prevent their going that way. They are perfectly free to do so by paying the fare, which is about five dollars more than the through fare via Saint Paul or Billings, and by rechecking their baggage at Portland. But the Northern Pacific has built its property with the reasonable expectation of carrying passengers for Puget Sound nearly two thousand miles, so long as it shall furnish them efficient and comfortable transportation. The Union Pacific has not seen fit to build its railroad to Puget Sound, and by the commission's order the Northern Pacific is directed to give up some part of the revenue which it justly has expected to receive and to put the Union Pacific, by furnishing for its benefit the northern company's terminals at Seattle and Tacoma, in substantially as good a position as if it had built to Puget Sound. This would seem to be perilously near taking the Northern Pacific's property without due process of law. *Wisconsin, Minn. & Pac. R. R. Co. v. Jacobson*, 179 U. S. 287; concluding paragraph in the opinion in *Louisville & Nashville Railroad Company v. Central Stockyards Company*, 212 U. S. 132. The case is exactly as if a competitor built from a point some miles out of Chicago to a point some miles out of New York and secured connections at both points with the Pennsylvania road, or any other railroad having terminals in Chicago and New York, and also its own line between the two cities. Not only is it conceivable, but it is even certain, that many travelers between Chicago and New York, either to visit friends, or to look at property, or to see scenery and



gratify their sense of the sublime and beautiful, would wish to travel over the new line. The commission's order would justify taking from the old line a part of its business and the use without adequate compensation of its terminals. We say advisedly use of its terminals without adequate compensation, because no compensation for short hauls, however large, can compensate for the use of terminals in large cities. These terminals as a rule are created for and can only be made profitable by a large volume of long haul business.

The commission's order is novel and contrary to usage, and the testimony shows the position of the Northern Pacific to be conformable to that of railways generally. Mr. Woodworth's statement of the general usage among railways as to joint passenger rates may well be quoted and is as follows (Transcript pp. 54-6) :

"For each railroad to insist upon the long haul in connection with freight or passengers moving to or from points in its territory, is the general practice, and departures from this rule are voluntary and when not forced by competition are influenced by allowance of excess of indemnifying divisions, or by other considerations. For illustration: The O. R. & N. Company will not join the Northern Pacific in equalizing, via Spokane or other gateways, rates in effect between stations on its lines in Washington, Oregon, or Idaho and points in Eastern States.

Commissioner Prouty. Now, I do not think, Mr. Woodruff, it would be profitable to go into exceptions of that sort so far as they regard freight traffic.

Mr. Woodworth. This is tickets.

Mr. Bunn. This is all passenger.

Commissioner Prouty. I don't know, he started out by saying that was true with respect to both

freight and passenger business. The commission recognizes, I think, that you have a right to protect your territory in reference to freight business, and that was our position with reference to this particular territory. Now give any illustrations you have there or read anything you have written on the subject of passengers.

Mr. Bunn. These instances are all passengers.

Mr. Woodworth. This refers to passengers.

Commissioner Prouty. What you say there is that the O. R. & N. decline to equalize. Equalize might be one thing but opening your line upon the basis of its local rate might be a different thing.

Mr. Woodworth. Well, they declined to take through tickets.

Commissioner Prouty. Declined to make through tickets?

Mr. Woodworth. Yes, via Spokane.

Commissioner Prouty. Proceed now with your statement.

Mr. Woodworth. The O. R. & N. Company do permit the Great Northern to make equal rates via Spokane, but divisions are generally on a basis which equalizes revenue of the O. R. & N. Co., via the Huntington route, regardless of distance passengers are hauled for G. N. For example, on a ticket reading via G. N. through Spokane to Rockford, Washington, on the O. R. & N. Co.'s line, 27 miles south of Spokane, the O. R. & N. receives 25 per cent of the revenue accruing west of St. Paul for the reason, presumably, that it would get this revenue result on a ticket reading via Huntington to Rockford. The Union Pacific will not handle via junction points west of Missouri River at equal rates passengers moving between points on its own line and points on or east of Missouri River. The only exceptions to this rule are Ogden, Salt Lake, and other points in Utah which can be reached by the D. & R. G.

Commissioner Prouty. Now let me understand just what that statement is. Take some point and illustrate what you mean.

Mr. Woodworth. For example, a passenger cannot buy a ticket from Green River, Wyoming, to Omaha or any point east thereof reading via Denver and any other line than the Union Pacific. Their tariffs carry a provision to this effect and the rule is shown on page 62 of the compendium.

Prior to the receivership and separate operation of the Oregon Short Line Railroad Company and the agreements which were made by the receivers of the O. S. L. with other connecting lines east of Ogden, this rule of the Union Pacific covered all points on the O. S. L. and O. R. & N. Co.'s lines, both of which were then operated as a part of the Union Pacific System. Tickets cannot be sold from St. Paul or other points in eastern territory via the Northern Pacific through Billings or through Helena to points on the Great Northern. For example, a man cannot buy a ticket from St. Paul to Ubet via the Northern Pacific through Billings, although the distance via that route is shorter than the distance via Great Falls and the train service is such that would permit him to reach his destination with equal, or greater convenience via Billings. In like manner the Northern Pacific objects to the sale by the Great Northern of tickets from St. Paul or other eastern points via Helena or Butte to points further west on line of the Northern Pacific, and there is a similar prohibition on tickets from Seattle or other coast points via N. P. through Spokane to points on the Great Northern east of Spokane, or from Seattle or other Pacific coast points via G. N. through Spokane to points on the Northern Pacific east of Spokane.

Commissioner Prouty. Now, would it be possible to buy a ticket from St. Paul to Tacoma via the Great Northern to Spokane and the Northern Pacific from Spokane to Tacoma?

Mr. Woodworth. No, the Canadian Pacific will not permit the sale of tickets via any junction point west of Winnipeg to their stations between Winnipeg and Huntingdon Junction, a few miles east of Vancouver. This does not apply to their proprietary line, the Soo Line, which has an arrangement for interchange with the C. P. R. at Portal, N. D. The Chicago & North Western will not interchange passenger business with the Burlington road at Crawford, Nebraska, on through tickets. They do thus interchange with the Union Pacific through Orin Junction and the Colorado and Southern.

Mr. Bunn. That is where the Burlington and North Western cross, I take it, at Crawford?

Mr. Woodworth. Yes, that is where the Burlington crosses the North Western. The Pennsylvania R. R. will not accept from the Wabash or Lake Shore at Pittsburg business from Chicago, St. Louis, or other western common points destined to points on Pennsylvania R. R. east of Pittsburg.

Mr. Bunn. In other words, you cannot buy a ticket from Chicago over the Lake Shore to Pittsburg and through from Pittsburg to New York on the Pennsylvania Railroad?

Mr. Woodworth. No, sir.

Mr. Bunn. Nor to Philadelphia?

Mr. Woodworth. No, sir. Nor will the Pennsylvania lines receive from the Big 4 or other lines at Cincinnati business from St. Louis or other western common points which could have been handled over the Vandalia Line. Nor does the Pennsylvania R. R. receive from other lines at Washington, Baltimore, or Philadelphia, on through tickets, passengers destined to points on their own line, for whom a route is provided over the Fort Wayne, Panhandle, or Vandalia lines. The Chicago & North Western and Chicago, Milwaukee & St. Paul do not interchange business at Sioux City, i. e., through tickets are not sold via

C. & N. W. to Sioux City, thence via C., M. & St. P. to western destinations, or via C., M. & St. P. to Sioux City, thence via C. & N. W. to western destinations or vice versa."

The suggestion even that the commission *ought* to have the power here exercised in the case of passenger travel, a power radically different in nature from that which it has as to freight, could not be supported historically. Whilst the necessity of giving the commission power to order through routes and rates in the case of freight has been much agitated and discussed, we believe there has been no public agitation and very little thought about any such power touching passenger business. We think it will be found on examination that freight transportation and certain evils thereof furnished the whole motive for giving this power to the commission. The following extracts from Congressional debates, which we think include everything relevant, support our suggestion:

Mr. Mann (Illinois) (explaining the bill for the House Committee): "Now, you wish to know what we have attempted to do through the Hepburn bill. Let me briefly enumerate the main provisions of this measure. What does the bill do? \* \* \* You may ask what is the purpose of enlarging the definition of common carriers in such a manner as to permit the Interstate Commerce Commission to establish through routes and through rates. Let me give just one illustration. The Standard Oil crowd are great owners of railroad stocks. They are interested, not only in the stock of the Standard Oil Company, but they are interested in and owners of great masses of railroad stocks. They have their influential men upon the boards of directors of many railroad companies. They own pipe lines of their own. These pipe lines are not common car-

riers. The oil which they transport is transported through their pipe lines. Competitors of the Standard Oil Company usually do not own a pipe line. Take, for instance, a case where oil is to be transported from the interior to the Atlantic seaboard. The Standard Oil Company owns a pipe line. Their competitors do not own pipe lines. The Standard Oil Company hence does not care for the establishment of through routes and through rates on the shipment of oil. Their competitors have frequently found that they could not obtain a through route, but were compelled to pay the sum of the local rates of the different roads over which the oil must be shipped in order to pass from the interior point to the seaboard."

"By this bill we propose that the Interstate Commerce Commission shall have the power, if no through rate now exists on oil from Cleveland to Boston, to establish a through route and to fix the through rate, and to divide that rate among the roads which constitute the through route. Under the terms of the present Interstate Commerce law the two roads connecting with each other are not covered under the act for the purpose of a through rate unless they make a through bill of lading; but under the terms of the pending bill, if two carriers are otherwise engaged in interstate commerce, and hence come under the terms of the law, they cannot lawfully refuse to give a through bill of lading and make a through rate and a through route, and if they do the shipper may appeal to the Interstate Commerce Commission and secure relief." \* \* \*

Mr. Murdoch: "In the proviso at the end of that section, providing for the establishment of a through route, taking the language 'if no satisfactory route exists,' does the word 'satisfactory' there go to the rate—satisfactory and reasonable?"

Mr. Mann: "If a satisfactory route exists there is no occasion to require the establishment of the new route. It does not go to the question of the rate, because the Commission already has the power under other provisions of the bill to make that rate on the already established route reasonable if it be not reasonable. In addition to the power to establish through routes we enlarge the term "railroad" and the term "transportation" for the purpose of including all of the facilities of transportation." *Congressional Record*, Vol. 40, Part 3, Page 2244. (February 7, 1906).

Mr. Tillman in the Senate said: "I am going to explain why these words ought to go in. This is part of the provision covered by lines 17 to 25, page 11, which authorizes the Commission to establish through routes and joint rates as a maximum to be charged and to prescribe divisions of such rates when the carriers fail to agree. The defect in this provision is found in the addition in lines 24 and 25 of the words "provided no reasonable or satisfactory through route exists." This operates as a bar to the compulsory establishment of an additional through route which may be demanded and found reasonable. Such additional through route very frequently, if not generally, ought to be granted, for otherwise competition between practicable reasonable through routes is denied. As the provision now stands a through route may be established where none exists, but generally speaking there is always at least one through route. The most frequent subject of complaint is discrimination between connecting lines, and however unjust such discrimination against the non-favored carrier or the public may be the proviso clause above mentioned operates to prevent relief."

"I am reading a memorandum here as made by the Interstate Commerce Commission:

"The Commission has very recently decided the case of the Enterprise Transportation Company against certain trunk lines, and the decision shows a through route between the railroad trunk lines at New York and the Fall River Line to New England and a refusal to establish a through route with the Enterprise Transportation Company, a water line competing with the Fall River line between New York and New England. To avoid all question, there should be inserted in place of the words stricken out as above indicated the following: 'such authority shall extend to through routes and joint rates for transportation partly by railroad and partly by water.'"

"And these words I have moved to insert."

"Here is the case of this Enterprise Company in which it is shown that an independent boat line is denied through routes with the Western railroads because the New York, New Haven & Hartford road owns the only boat line which reaches Fall River except this one. Therefore competition between the West and New England, for instance, is prevented by the failure to establish through routes, if they are demanded, with other lines. In other words, there is a monopoly created or is already in existence, and an absolute denial of competition. One boat line connects with the road. The other boat line is not allowed to connect with the road and is not given through rates."

Mr. Aldrich: "Mr. President, there should be no misapprehension as to the effect of this amendment. Under the bill as it passed the House the Interstate Commerce Commission had a right to establish through routes and joint rates where no reasonable through route exists. This proposes to strike out the provision about reasonableness and to allow the Commission to establish through routes anywhere in the United States without reference to existing routes and without reference



to whether the people are accommodated by the existing route. The question of through routes by rail and water is a different question, and under the guise of providing for through routes by rail and water the Interstate Commerce Commission is suggesting to the Senate, or dictating to the Senate, that it should destroy the whole structure of this bill so far as through routes are concerned." *Congressional Record*, Vol. 40, Part 6, Page 6678.

Mr. Lodge: "Mr. President, this matter has been brought to my attention, particularly in the Fall River case which has been cited by the Senator from South Carolina (Mr. Tillman). An independent steamship company has been started running from Fall River to New York, and the only other through line is the New England Navigation Company, which is controlled by the New York, New Haven & Hartford. The trunk lines, both in New York and New England, so arranged the rates that this steamship company is deprived absolutely of freight, which seems not quite fair to him or to the company. They brought a case before the Interstate Commerce Commission which decided, as I remember, that under the existing law they had no power to deal with this case." *Congressional Record*, Vol. 40, Part 6, Page 6681. (May 11, 1906).

The commission says that opening the joint route through Portland would not hurt the Northern Pacific. The one fact conclusively established by the testimony of every witness examined on the point at the trial, and which the evidence leaves in no doubt, is that opening the Portland joint route would greatly increase the travel via the Union Pacific at the expense of travel via the Northern Pacific. The testimony referred to below substantiates this statement:

Boole (lives at Seattle) p. 87-9.

Lomax (Gen'l Passenger Agent U. P.) p. 89-91.

Sedweek (lives at Kansas City) p. 106-8.

Cotton (Chicago Ticket Agt., Rock Island) p. 108-10.

Stinde (St. Louis Ticket Agt., Wabash) p. 110.

Gibson (Cleveland Ticket Agt., Union Station) p. 110-11.

Frawley (Kansas City Dist. Pass. Agt., U. P.) p. 112-14.

Jones (Kansas City Ticket Agt., Rock Island) p. 114-15.

Mr. Dillard's statement p. 117.

De Friest (New York Genl Agt., U. P.) p. 122-24.

Kaill (Kansas City Asst. Genl. Frt. & Pass. Agt., U. P.) p. 124.

Sherwin (Kansas City Ticket Agt., Mo. Pac.) p. 124-25.

Lowe (St. Louis Genl. Agt., U. P.) p. 125-26.

McFarland (Omaha Union Station Agt.) p. 126-28.

Speck (Kansas City Ticket Agt., U. P.) p. 128-29.

Williams (Chicago Pass. Agt., U. P.) p. 129-30.

Parnellee (Chicago Ticket Agt., C. & N. W.) p. 140-43.

The annoyance at Portland shown in evidence, in the way of failure of passengers to obtain their tickets and baggage checks from Portland to Puget Sound points, evidently results from the Union Pacific advertising a through line and through tickets to Puget Sound; thereby making travelers think they are ticketed and their baggage checked through. This seems *obviously* the case for there is no more likelihood of this sort of trouble at Portland than at any other ter-

minus; and witnesses testified to the fact. See Witness Collins (Baggage Clk, Portland) pp. 101-106  
Witness De Friest (Gen'l Agt. U. P., New York)  
pp. 122-124.

CHARLES W. BUNN.



INTERSTATE COMMERCE COMMISSION *v.* NORTHERN  
PACIFIC RAILWAY COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR  
THE DISTRICT OF MINNESOTA.

No. 570. Argued February 23, 24, 1910.—Decided March 7, 1910.

Under § 4 of the act of June 29, 1906, c. 3591, 34 Stat. 589, giving the Interstate Commerce Commission power to establish through routes and joint rates where no reasonable or satisfactory through route exists, the existence of such route may be inquired into by the courts, notwithstanding a finding by the commission.

When one through route exists which is reasonable and satisfactory, the fact that the public would prefer a second which is no shorter or better cannot overcome the natural interpretation of a provision in the statute to the effect that jurisdiction exclusively depends upon the fact that no reasonable or satisfactory route exists.

As the Northern Pacific route from the points named to points between Portland and Seattle is reasonable and satisfactory, the fact that there are certain advantages in the Union Pacific or Southern route does not give the Interstate Commerce Commission jurisdiction to establish the latter as a through route against the objection of the Northern Pacific Railway Company.

THE facts are stated in the opinion.

*Mr. Waide H. Ellis*, Assistant to the Attorney General, and *Mr. P. J. Farrell*, with whom *Mr. Edwin P. Grosvenor* was on the brief, for the appellant:

The order of the Commission cannot be set aside by the court merely for the reason that the court, if placed in the position of the Commission, would not have ordered the through route. Section 1 of the Hepburn Act relates to through routes and joint rates. This gives the Commission the power to establish a through route, provided *in the opinion of the Commission* no satisfactory or reasonable through route exists. Whether or not a through route already in existence is reasonable or satisfactory rests with the Commission.

Under *Interstate Comm. Comm. v. Ill. Cent. R. R.*, 215 U. S. 452, the courts are without authority to set aside an order of the Commission merely for the reason that the court may deem the order inexpedient. The determination of the question of fact rests with the Commission, and not with the court. Nothing can be found in the debates to indicate that it was intended by Congress that the courts should have the authority to answer the question. 40 Cong. Rec., pt. 3, pp. 2244, 3115; pt. 6, pp. 6678, 6679, 6681.

In determining whether an existing passenger route is reasonable and satisfactory, the first inquiry necessarily must be whether that route fairly meets the requirements of the traveling public. In this case the facts show that the public interests demanded the establishment of another through route to Puget Sound points via the Portland gateway.

The authority of the Interstate Commerce Commission to establish through routes rests entirely upon the provisions of the Hepburn Act above quoted. Prior to the enactment of that law, the Commission had no power to order the establishment of through routes or joint rates. *Southern Pacific Co. v. Interstate Comm. Comm.*, 200 U. S. 536; *O. S. L. R. R. & Co. v. N. P. Ry. Co.*, 51 Fed. Rep. 465; *S. C.*, 61 Fed. Rep. 158; *K. & I. Bridge Co. v. L. & N. R. R. Co.*, 37 Fed. Rep. 565; *Little Rock & Memphis Ry. Co. v. St. Louis, I. M. &*

*So. Ry. Co.*, 41 Fed. Rep. 559; *S. C.*, 59 Fed. Rep. 400; *S. C.*, 63 Fed. Rep. 975; *A. C. & S. F. Ry. Co. v. Miami Steamship Co.*, 86 Fed. Rep. 407.

As to what is a satisfactory route see the *Enterprise Transp. Co. v. Penna. R. R. Co.*, 12 I. C. C. 326.

The kind of a through route which will divest the Commission of its jurisdiction in this particular must be as beneficial to the public as the route which the Commission may otherwise establish. *Loup Creek Colliery Co. v. Virginian Ry. Co.*, 12 I. C. C. 471; *Chi. & Mil. El. Ry. v. Ill. Cent. R. R. Co.*, 13 I. C. C. 20; *Cedar Rapids & I. City Co. v. Chicago & N. W. Ry.*, 13 I. C. C. 250; *Cardiff Coal Co. v. Chi., Mil. & St. P. Ry. Co.*, 13 I. C. C. 460; *Stedman & Sons v. Chicago No. West. Ry. Co.*, 13 I. C. C. 167; *Pacific Coast Assn. v. No. Pac. Ry. Co.*, 14 I. C. C. 51; *Star Grain & Lumber Co. v. A., T. & S. F. Ry. Co.*, 14 I. C. C. 364; *Chamber of Commerce of Milwaukee v. Chicago, R. I. & Pac. Ry. Co.*, 15 I. C. C. 460.

The principles established by these cases cannot be questioned.

Under the English statute the Commission inquires whether "having regard to the circumstances," the route proposed is a reasonable one. Under our statute the language is that the Commission shall establish a route sought to be opened, "provided no reasonable or satisfactory through route exists." The provisions of the two statutes are practically the same in meaning. *E. & W. Junction Ry. Co. v. G. W. Ry.*, 1 Ry. & Canal Cas. 331; and see *Caledonian Ry. Co. v. N. British R. R.*, 3 Ry. & Canal Cas. 403; *Swindon, Mo. & A. R. R. Co. v. Great Western R. R.*, 4 Ry. & Canal Cas. 352.

The testimony supports the finding of fact of the Commission that as regards passenger traffic the existing through route was not reasonable or satisfactory.

In determining whether an existing through route is reasonable or satisfactory the first consideration is the public interest.

A wide difference exists between a reasonable through

route for passenger movement and one for the movement of freight. Into the former there enters a personal element which does not exist in the case of property.

The testimony adduced before the Commission supports the finding of that body that a reasonable and satisfactory through route for passengers did not already exist, and therefore the Commission was justified in opening the Portland gateway by directing the establishment of another through route.

*Mr. Charles W. Bunn* for appellee:

When the Hepburn Act was passed it had been settled that joint routes and tariffs were a matter of convention between carriers and that the act to regulate commerce contained no provision warranting their imposition by order of the Commission. *So. Pac. Co. v. Interstate Comm. Comm.*, 200 U. S. 536; *King v. N. Y., N. H. & H. R. R. Co.*, 4 I. C. C. 251, 262; *Independent Refiners v. Western N. Y. & P. R. Co.*, 5 I. C. C. 415, 458; *Clark v. L. S. & M. S. Ry. Co.*, 11 I. C. C. 558; *Re Alleged Unlawful Discrimination*, 11 I. C. C. 587.

Therefore the amendment of 1906 confers on the Commission a new power which cannot be enlarged by intendment or doubtful interpretation. This power was conferred on the Commission subject to the plain limitations stated in the language of the amendment provided no reasonable or satisfactory through route exists.

The Commission has held that it has no power to order a through route except where no reasonable or satisfactory one exists. *Cardiff Coal Co. v. C., M. & St. P. Ry. Co.*, 13 I. C. C. 460. But in *Pacific Coast Lumber Manufacturers' Assn. v. N. P. Ry. Co.*, 14 I. C. C. 23, the Commission *obiter* threw out the suggestion that there might be a difference between a reasonable route for freight and one for passengers.

Whether this *ought* to be the law is not the question. The case must be determined upon the language used by Congress.

The Union Pacific has not seen fit to build its railroad to



Puget Sound, and by the Commission's order the Northern Pacific is directed to give up some part of the revenue which it justly has expected to receive and to put the Union Pacific, by furnishing for its benefit the northern company's terminals at Seattle and Tacoma, in substantially as good a position as if it had built to Puget Sound. This would seem to be perilously near taking the Northern Pacific's property without due process of law. *Wisconsin, Minn. & Pac. R. R. Co. v. Jacobson*, 179 U. S. 287; *Louisville & Nashville R. R. Co. v. Central Stock Yards Co.*, 212 U. S. 132.

The Commission's order is novel and contrary to usage, and the testimony shows the position of the Northern Pacific to be conformable to that of railways generally.

The suggestion even that the Commission ought to have the power here exercised in the case of passenger travel, a power radically different in nature from that which it has as to freight, could not be supported historically. 40 Cong. Rec., pt. 3, p. 2244; pt. 6, pp. 6678, 6681, 1906.

The Commission says that opening the joint route through Portland would not hurt the Northern Pacific. The one fact conclusively established by the testimony of every witness examined on the point at the trial, and which the evidence leaves in no doubt, is that opening the Portland joint route would greatly increase the travel via the Union Pacific at the expense of travel via the Northern Pacific.

MR. JUSTICE HOLMES delivered the opinion of the court.

This is a bill to restrain the enforcement of an order of the Interstate Commerce Commission. 16 I. C. C. Rep. 300. A preliminary injunction was granted by four circuit judges, on the ground that the Commission had exceeded its powers, and the case was brought here by appeal. The order was made in a proceeding instituted by the Commission upon its own motion, and required the establishment of through routes and joint rates, for passengers and their baggage, east and

west, from and to points on the Chicago and Northwestern Railway between Chicago and Council Bluffs, Iowa, inclusive; and from and to points on the Union Pacific Railroad between Colorado common points and Omaha, Nebraska, and Kansas City, Missouri, inclusive; via Portland, Oregon; to and from points on the Northern Pacific Railway between Portland and Seattle. The joint rates are to be the same as the present rates between the same points via the Northern Pacific road and its connections. This order concerns passenger travel in one direction only. It does not affect round trips, and it does not deal with freight.

The points between Portland and Seattle can be reached from the places mentioned at the other end of the route, by way of the Northern Pacific alone from St. Paul, or by way of the Chicago, Burlington and Quincy, to Billings, Montana, and then by the Northern Pacific for the last thousand miles; the Chicago, Burlington and Quincy being jointly owned and controlled by the Northern Pacific and the Great Northern roads. But an average of 8,000 persons a year goes by way of the Union Pacific to Portland, where, to go further, passengers have to change to the Northern Pacific line. Under present arrangements the Union Pacific issues a coupon with its tickets, entitling the holder to a first-class passage on from Portland, but he has to exchange the coupon for a ticket, to recheck his baggage, and to pay the additional Pullman fare. The effect of the order is to put the Union Pacific on an equal footing with the Northern Pacific in the use, for through travel, of the road belonging to the latter between Portland and Seattle. It is said that this road, with the expensive terminals of the Northern Pacific at Tacoma and Seattle, would not be supported by local business, but depends on the traffic of the whole Northern Pacific system. Therefore the Northern Pacific objects to the order and brings this bill.

The authority of the Commission to establish through routes and joint rates is conditioned by the proviso that 'no

reasonable or satisfactory through route exists.' Act of June 29, 1906, c. 3591, § 4, 34 Stat. 584, 589. It is urged that this condition is addressed only to the opinion of the Commission and cannot be reëxamined by the courts as a jurisdictional fact. The difficulty of distinguishing between a rule of law for the guidance of a court and a limit set to its power is sometimes considerable. Words that might seem to concern jurisdiction may be read as simply imposing a rule of decision, and often will be read in that way when dealing with a court of general powers. *Fauntleroy v. Lum*, 210 U. S. 230, 235. But even in such a case there may be a difference of opinion, *ibid.* 245, and when we are dealing with an administrative order that seriously affects property rights, and does so by way rather of fiat than of adjudication, there seems to be no reason for not taking the proviso of the statute in its natural sense. See *Interstate Commerce Commission v. Illinois Central R. R. Co.*, 215 U. S. 452, 470.

We are of opinion then that the Commission had no power to make the order if a reasonable and satisfactory through route already existed, and that the existence of such a route may be inquired into by the courts. How far the courts should go in that inquiry we need not now decide. No doubt in complex and delicate cases great weight at least would be attached to the judgment of the Commission. But in the present instance there is no room for difference as to the facts, and the majority of the Commission plainly could not and would not have made the declaration in their order that there was no such through route, but for a view of the law upon which this court must pass. It is admitted that the Northern Pacific route is shorter than that of the Union Pacific by way of Portland and the running time somewhat less, and it is added by the majority that the 'passenger goes in as good a car and is provided with as good a berth and as good a meal.'

There is some suggestion that at times the northern route may not be as good as the southern, although at other times

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it may be better, but the ground of the order avowedly was that the personal preferences of many travelers is to go by the Southern way. If they do, it is said, they can select from a great variety of routes as far as Ogden, Utah, they can visit cities not reached by the northern lines, they can search over a wide area for homesteads, they can behold the natural beauties that may be rivalled but not repeated on the other roads. It appears to us that these grounds do not justify the order. The most that can be said of them is that they are reasons for desiring a second through route, but they are not reasons warranting the declaration that 'no reasonable or satisfactory through route exists.' Obviously that is not true, except by an artificial use of words. It cannot be said that there is no such route, because the public would prefer two. The condition in the statute is not to be trifled away. Except in case of a need such as the statute implies, the injustice pointed out by the Chairman in his dissent is not permitted by the law.

*Decree affirmed.*

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